United States Court of Appeals

for the Second Circuit

APPENDIX

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74-2542

United States Court of Appeals

For the Second Circuit

B

Docket No. 72-1064

CHRIS-CRAFT INDUSTRIES, INC.,
Plaintiff-Appellant,

against

PIPER AIRCRAFT CORPORATION, HOWARD PIPER, THOMAS F. PIPER, WILLIAM T. PIPER, JR., BANGOR PUNTA CORPORATION, NICOLAS M. SALGO, DAVID W. WALLACE, THE FIRST BOSTON CORPORATION, PAUL L. MILLER and N. BAYARD,
Defendants-Appellees.

Docket No. 72-1120

BANGOR PUNTA CORPORATION,
Plaintiff-Appellant,

against

CHRIS-CRAFT INDUSTRIES, INC.,
Defendant-Appellee.

Docket Nos. 72-1053 and 72-1140

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff-Appellant,

against

BANGOR PUNTA CORPORATION,
Defendant-Appellee (Cross-Appellant).

UNITED STATES COURT OF APPEALS
FILED
JAN 3 1972
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

APPENDIX ON APPEAL FROM FINAL JUDGMENTS OF UNITED STATES DISTRICT COURT FOR SOUTHERN DISTRICT OF NEW YORK

VOLUME I — Pages 1A to 378A

Counsel of Record Are Listed on Inside of Front Cover

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PAGINATION AS IN ORIGINAL COPY

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69 Civil 2227 Chris Craft Industries Inc. vs. Piper Aircraft Corp. et. al. 69 Civil 22

DATE	PROCEEDINGS	Date Order or Judgment Note
May 22,69	Filed complaint and issued summons.	
May.27.69	Filed ORDER -Ordered thay motion is granted.Mc Lean,J.	
May 29-69	Filed Notice of Depositions.	
May 29-69	Filed Amended Complaint.	
May 29-69	Filed Notice of Motion re: Dismiss complaint. Ret.6/10/69.	
May29-69	Filed Affidavit in support of motion.	
May 29-69	Filed Memorandum in support of defts'.motion to dismiss.	
June 3.69	Filed Deft Bangor Punta Corp notice of motion ret. 6.10.69 for an order dismissing the complaint. amended.	
une 5-69	Filed ANSWER of Piper Aircraft Corp., Thomas F. Piper, William T. Piper, Jr. and Howard Piper to amended complaint.	CPW&W
un 13.69	Issued subp. on Notice of taking Deposition	
June 17-69	Filed ANSWER of Bangor Punta Corp. and David W. Wallace toamended complaint.	WSP&W
un 17.69	Filed stip and order that time for Deft Wallace to answer to the complaint is extended to 6.23.69 Lasker,J.	
Jun 19-69	Filed record of proceedings dated 5-[illegible]-69	
un 18.69	FiledBBngor noticd to take depsotions.	
un 18.69	filed MEMO ENDORSED on Moton ret.6.17.69 ORDERED - Motion withdrawn Lasker.J. otion No 66	
Jun 18.69	Filed Memo endorsed on motion ret. 6.17.69 Ordered motion withdrawn Lasker,J Motion no 65.	
Jun 20-69	Filed Affidavit of Service of summons and complaint on deft. William T.Piper,Jr. on 5/24/69.	
	Served: David W.Wallace on 5/24/69.	
	Bangor Punta Corp. on 5/24/69 by David W. Wallace.	
	Paul L.Miller by Mrs. Paul L.Miller on 5/24/69.	
	Howard Piper on 5/24/69.	
	Thomas F. Piper 5/24/69.	
	Piper Aircraft Corp. on 5/24/69.	
	The First Boston Corp. on 5/24/69.	
	David W. Wallace 5/24/69.	
Jun 20-69	Filed Amended ANSWER of certain defendants.	CPW&W
un 26.69	Filed Deft Bangor 's supplementary notice to take depositions.	
un/30/69	Filed pltffs notice to take depositions of persons indicated.	
Jul/2/69	Filed stip and order that time for deft First Boston Corp, Miller,& Bayard to answer to the complaint is extended to 7/1/69 Metzley J.	
Jul/3/69	Filed ANSWER of Deft. First Boston Corp Miller &Bayard	
Jul 18-69	Filed stipulation and order to take depositions as indicated. Bonsal, J. (Also in 69 Civil 2354).	
Jul 23-69	Filed Memorandum in support of Chris-Craft's motion for a pre.in.j.	
Jul 23-69	Filed Order to Show Cause re: Pre.In.j. Ret.7/29/69.	
Aug.5-69	Filed Affidavit in opposition.	
Aug.5-69	Filed Affidavit in opposition submitted by Bangor Punta Corp. of John E. Flick.	
Aug.5-69	Filed Affidavit in opposition submitted by Bangor Punta Corp. John J. Martin.	
Aug.5-69	Filed Memorandum in oppositionto pltf's.motion.	
Aug.5-69	Filed Supplemental Memorandum submitted by Bangor Punta Corp.	
Aug.6-69	Filed (in court) Plaintiff's Reply Memorandum.	
Aug.6-69	Filed (in court) Affidavit of John J. Buckley in opposition to pltf's.motion.	
Aug.6-69	Filed (in court) Plaintiff's Reply Affidavit.	
Aug.5-69	Filed Affidavit in opposition to motion.	
Aug.5-69	Filed Memorandum of defts. Piper Aircraft Corp.,etc. to pltf's.motion.	
Aug.19-69	Filed OPINION #36167. Tenney, J. ***For the foregoing reasons,plaintiff's motion is in all respects denied. So ordered. (mailed notice)	
Aug.18-69	Filed stipulation and order showing the schedule for taking depositions. So ordered. Wyatt, J.	

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JUDGE POLLACK

DATE	PROCEEDINGS	Date Or Judgment
Aug.28-69	Filed Memorandum in opposition to proposed supplementary order.	
Aug.28-69	Filed Plaintiff's Memorandum in support of proposed supplementary order.	
Aug.28-69	Filed Memorandum in opposition to proposed supplementary order.	
Aug.28-69	Filed MEMORANDUM OPINION #36121. Tenney, J. ***For the foregoing reasons, the proposed Supplementary Order submitted to this Court by plaintiff will not be signed. (mailed notice).	
Sept.4-69	Filed Notice of Appeal by Chris-Craft Industries, Inc. (mailed copy)	
June 9-69	Filed Memorandum in opposition to deft. Bangor Punta's motion to dismiss.	
June 9-69	Filed Affidavit in opposition.	
June 24-69	Filed Notice to take Depositions.	
Sep/8/69	Filed certified record on appeal to the U.D.C.A/	
Sep/15/69	Filed stip andorder that depositions of witnesses is adj as indicated. Frankel J.	
Sep/15/69	Filed stip an d order tbat depostions of witnesses is adj'd as indicated Frankel J.	
Oct/22/69	**Filed stip and order that time for deposition of Deft Bangor is ajdourned as indicated. Weinfeld.J**	
Nov.25-69	Filed Notice to take Depositions. (Also in 69 Civ. 2354).	
Nov.25-69	Filed Notice to take Deposition.	
DEEC?17 5/69	Filed affidavit of srrvice on deft Salgo.....	
Dec/5/69	**Filed Deft Bangors notice ot motion ret. 12/11/69 re Stay deposition**	
Dec/5/69	**Filed affidaivt of James V. Ryan. in support of motion**	
Dec/5/69	**Filed deft Bangors memorandum of law in support of motion**	
Dec.11-69	Filed (in court) Affidavit in support of motion.	
Dec.11-69	Filed (in court) Affidavit in opposition to motion.	
Dec.12-69	Filed Order and stipulation that depositions shall be taken on dates as indicated of Nicolas M.Salgo,David W.Wallace and John Flick,etc.etc. So ordered. Frankel, J. (Also in 69 Civ. 2354).	
Dec.12-69	Filed MEMO.END. on motion papers filed 12/5/69. Motion withdrawn. So ordered. Frankel, J.	
Dec.15-69	Filed Notice to take Depositions. (ZAlso in 69 Civ. 2354).	
Dec/16/69	**Filed deposition of John Hawkinson (Mailed notices)**	
Dec.17-69	Filed Notice to take Depositions.	
Dec.19-69	Filed transcript of Record of Proceeding of Dec.8,1969.	
Dec.22-69	Filed stipulation and order extending deft. Nicolas M.Salgo's time to answer complaint to 1/14/70. So ordered. Cannella, J.	
Dec 31-69	Filed pltff's notice of deposition	
Jan/9/70	Filed pltffs notice of motion ret. 1/15/70 Re production and inspection.	
Jan/9/70	Filed Pltffs memorandum in support of motion.	
Jan14-70	Filed stip. & order extending time of deft.(Salgo) to answer amended complaint to 1-28-70.-Bonsal,J.	
Jan14-70	Filed pltff's affdvt. & notice of motion to compel answers-ret. 1-22-70	
Jan14-70	Filed pltff's memorandum in support of its motion	
Jan14-70	Filed stip. adjourning pltffs' motion for production of documents filed 1-9-70 to 1-22-70	
Jan.20-70	Filed Pltf. Bangor (69 Civ. 2354) and Deft. Bangor (69 Civ.2227) Notice to take Deposition of witnesses indicate.	
Jan.21-70	Filed Affidavit in opposition to motion.	
Jan.21-70	Filed Memorandum submitted in opposition to plaintiff's motion.	
Jan.22-70	Filed stipulation and order further adjourning deposition of deft. David W.Wallace, Pres. of deft. Bangor Punto Corp; and of John E. Flick, as indicated. So ordered. Pollack, J.	

continued next page

DATE	PROCEEDINGS	Date Order or Judgment Noted
Jan.26-70	Filed Affidavit pur. to Gen.Rule 9(f).	
Jan.26-70	Filed MEMO.END. on motion papers filed 1/14/70. **In the absence of a substantial and valid reason for the examination, it would be unjust to deny a protective order to the party examined. This disposition is without prejudice to renewal of the application of the plaintiff on good cause shown. So ordered, Pollack, J. (mailed notice)	
Jan 28-70	Filed Pltff's notice of deposition	
Jan.29-70	Filed Supplementary Notice to take Depositions of American Investors Fund,Inc.,etc.	
Jan.30-70	Filed Notice to take Deposition. (Also in 69 Civil 2354).	
Feb.17-70	Filed Supplementary Notice to take Depositions. " " "	
Feb20,70	Filed pltff supplemental notice of deposition.	
Feb 24-70	Filed pltff's notice of deposition of parties listed	
Apr 3-70	Filed pltff's notice to take deposition of B. Cornfeld on 5-28-70.	
Apr.14-70	Filed pltff's notice Re: contents of report.	
Apr.23-70	Filed supplemental notice of deposition to be taken by pltff. David M. Munro--5-11-70--R.E. Slater--5-11-70--A.Long--5-12-70 A. Lipper III --5-13-70--D. Farrar --5-26-70. Summons issued.	
May.8-70	Filed deft(Bangor Punta Corp.) supplemental notice to take deposition, of Madison Fund, Inc. on 5-18-70-- American Investors Fund,5-21-70, Muriel Siebert & Company. on 6-2-70.	
May.12-70	Filed deposition of Robert W. Morey, Jr taken on 2-27-70.	
May.15-70	Filed deft's supplemental notice to take depositions of C.L.Gordon, on 6-3-70.	
May.19-70	Filed deft's supplemental notice to take deposition of Dean LeBaron.	
May.20-70	Filed deft's notice to take deposition of Bank of New York on 6-11-70, and John M. Blewer on 6-18-70.	
May 26-70	Filed Bungor notice to take depositionof witnesses indicated.	
Jun.2-70	Filed deposition of William A. Lester taken on 2-27-70.	
Jun.2-70	Filed deposition of Mary P. Bolles taken on 4-24-70.	
Jun.9-70	Filed supplemental notice by deft.(Bangor Punta Corp.) to take depositions of J.M. Hartwell & Co. on 6-26-70 & Investors Diversified Services on 6-30-70.	
Jun.12-70	Filed deft's(Bangor Punta Corp.) notice to take deposition of Sheriff Securities Corp. on 6-25-70 & Albert Frank -Guenther Law, Incorp. on 7-7-70.	
un.16-70	Filed true copy of order from the USCA: Order of District Court is affirmed & that the action be & it hereby is remanded to said District Court for further proceedings not inconsistent with the opinion of this court with costs to be taxed against the appellant. Clerk.	
Jun.16-60	Filed true copy from the USCA: Ordered that the judgment of this court of November 6,1969 be & it hereby is vacated. Clerk. m/n	
un.22-70	Filed pltff's second amended complaint.	
ul 16 70	Filed pltff's notice to take deposition of deft. First Boston Corp. on 8-8-70.	
ul.16-70	Filed pltff's notice to take deposition of Conning & Co. on 7-28-70.	
ul.20-70	Filed pltff's notice to take deposition of Ellsworth Buck on 8-4-70.	
Jul.29-70	Filed pltff's notice to take deposition of Troster,Singer & Co.	
ug.3-70	Filed pltff's notice to take deposition of Troster,Singer & Co.	
ep.3-70	Filed ANSWER & counterclaim of certain deft's to second amended complaint.	CPW&W.
ep.16-70	Filed the Piper proposed findings of fact.	
ep.25-70	Filed pltff's REPLY to Counterclaim of defts'	
ep.25-70	Filed affidavit of service by EDWARD H. SUTTON.	

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FPI—LK—12-3-63—12M—2945

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JUDGE POLLACK

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Order Judgment No
Oct.8-70	Filed pltff's deposition of Frederic C. Dumaine, Jr. a witness	
12 23 70	Filed Transcript of record of proceedings, dated 10-24-70	
eb.1-71	Filed order that all agreed and contested findings of fact shall not be filed so as to be made publiclyavailable, but shall be filed in the Chambers of the undersigned for such use as the Court may deem appropriate for the determination of this action. That , in addition to the persons designated order entered on 1-23-70, the parties may disclose such information to such expert witness or witnesses as the parties may retain to testify at the trial of this action. Ordered, that the underlying documents and information and said agreed and contested findings of fact shall continue to be subject to the terms and provisions of the aforesaid order on 1-23-70 . Pollack, J. M/N	
Feb.5-71	Filed pltff's notice to take deposition of John M. Ferris,a witness on 2-18-71	
Feb.6-71	BEFORE: POLLACK,J. -NON JURY TRIAL BEGUN. ADJD SINE DIE.	
Mar.19-71	Filed ANSWER to second amended complaint by deft's(First Boston Corp,P.L. Miller & N.Bayard.	S&C.
eb.6-71	Trial Begun: Before Pollack, J. Non-Jury Trial Adjourned Sine Die	
ar.9-71	Trial continued	
ar.10-71	Trial continued	
ar.11-71	Trial "	
ar.12-71	Trial "	
ar.15-71	Trial "	
ar.16-71	Trial "	
ar.17-71	Trial "	
ar.18-71	Trial " pltff rests, defts' move to dismiss-Decision Reserved.	
ar 19-71	Trail continued and concluded-Defts' Bangor Punta, N. Salgo & D. Wallace rest. and renew the motions made previously to dismiss the complaint--Decision Reserved. Defts. first Boston, P. Miller & N. Bayard restand renew motion to dismiss--Decision Reserved. Pltff. Chirs Craft moves to dismiss the counterclaim of piper Aircraft-- Decision Reserved. Pollack, J.	
pr.19-71	Filed Transcript of record of proceedings, dated 2-6-71	
Jul.9-71	Filed transcript of record of proceedings dated 3-9-10,11,12,15,16, 17,18,& 19-71.	
ec.10-71	Filed Opinion #38096: The counterclaim of Piper Aircraft Chris-Craft, is dismissed for lailure to sustain the burdenof proof thereof. The foregoing shall constitute the findings & conclusions required, by F.R. Civ P. 52(a). So ordered. Pollack,J. Judg. Ent. Clerk. Ent.12-1	
ec.10-71	Filed Findings of fact: Chris-Craft affirmative case twin comanche, findings only.	
ec.10-71	Filed Findings of Fact: Chris-Craft Affirmative Case.	
c. 14-71	Filed pltff's notice of appeal to U.S.C.A. -mailed copies.	

69 Civil 2354 Bangor Punta Corp. vs. Chris Craft Industries Inc. et. al.

DATE	PROCEEDINGS	Date Order or Judgment Noted
Jun 2,69	Filed complaint and issued summons.	
Jun 16.69	Filed notice of Deft Chris Craft to take depostion of Pltff.	
Jun 17.6	Filed Bangors notice to take depositions.	
Jun 19.6	Filed summons and return Served Chris Craft Industries Inc by P. Bidwell on 6.4.69	
	Loeb Rhoades & Co., by Miss Sheehy on 6.4.69	
	Shields & Co. by Mr. Cosgrove on 6.4.69	
Jun 24.69	Filed Deft Bangors notice to take depsotions of witnesses as indicated.	
Jun 26.6	Filed stip and order that time for defts to answer to the complaint isextended to 7.24.69 Lasker.J.	
Jul 10/69	Filed Answer of Deft.Chris Craft.	PWGR/MAO/
Jul 18-69	Filed stipulation and order to take depositions as indicated. Bonsal, J. (Filed in 69 Civil 2227)	
Jul 25-69	Filed stipulaion and order extending certain defendants' time to answer complaint to 8/25/69. So ordered. Tyler, J.	
Aug. -69	Filed stip & order extending the schedule for taking depositions. So ordered. , .	
Aug.29-69	Filed stipulation and order extending certain defendants' time to answer complaint to 9/25/69. So ordered. McLean, J.	
Sep/15/69	Filed stip andorder that depositions of wintesses is adj;d as indicated. Frankel J.	
Sep/15/69	Filed stip and order ahat depositionfof witnesses is adj'd ass indicated. FrankelJ.	
Sept.26-69	Filed stipulation and order extending defts. Loeb,Rhoades & Co.,Shields & Co., Armand Erpf and Mr. Sherrill's time to answer complaint to 11/25/69. So ordered. Bryan, J.	
Oct/22/69	Filed stip and order that time deposition of Deft Bangor are adjourned as indicated. Weinfeld.J.	
Nov.25-69	Filed Notice to take Deposition. (Filed in 69 Civ. 2227).	
Dec/5/69	Filed Deft Bangors notice of motionret. 12/11/69 re stay depostion	
Dec/5/69	Filed deft Bangors memorandum of law in support of motion.	
Dec/5/69	Filed affidavit of James V.Ryan.	
Dec/4/69	Filed stip andorder athat time for defts Loeb,Rhodes & Co , Shields & Co armand Erpf and Mr.Sherrill to answer to the complaint is extended to 12/23/69 Frankel J.....	
Dec.12-69	Filed stipulation and order that depositions of Nicolas M.Salgo,David W.Wallace and John Flick shall be taken as indicated,etc.etc. So ordered. So ordered. Frankel, J. (mailed notice).	
Dec.15-69	Filed Notice to take Depositions.	
ec/16/69	Filed deposition of John Hawkinson (Mailed notice.	
Jan 6-70	Filed stip & order extending defts' Loeb Rhoades , Shields , Erpf & Sherrill's time to ans to 1-19-70 - Lasker,J.	
un/20/70	Filed Pltffs Bangor (69 Civ 2354) Deft Bangor (69 Civ 2227) notice to take deposition of witnesses indicated.	
Jan.22-70	Filed Notice to take Depositions.	
Jan/28/70	Filed stip and order that time for defts Loeb Rhoades & Co Shields &Co., Armand Erpf and H.V.Sherrill time to answer to the complaint is extended to 2/2/9/70 & Pollack.J.	
Jan.29-70	Filed Supplementary Notice to take Depositions. of American Investors Fund, etc.	
Jan.29-70	Filed Supplementary Notice to take Depositions of " (in 69 Civ. 2227).	
Jan.30-70	Filed Notice to take Depcsition. (Filed in 69 Civi. 2227). (of Arthur Andersen & Co.)	
Feb.9,70	Filed First Amended Complaint.	
Feb.17-7	Filed Supplementary Notice to take Depositions. (Filed in 69 Civ. 2227).	

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DATE	PROCEEDINGS	Date Judge
b 19-70	Filed stip & order extending Chris-Craft's time to ans to 2-25-70	
.27-70	Filed stipulation and order extending deft. Chris-Craft Industries' time to answer first amended complaint to 3/6/70. So ordered. Pollack,J.	
b.27-70	Filed Supplementary Notice to take Depositions.	
r.11,70	Filed deft Chris Craft Industries Inc. Answer to first amended complaint.	
r.17-70	Filed stipulation and order extending certain defendants time to answer complaint to 4/6/70. So ordered. Pollack, J.	
r. 8-70	Filed stip & order that time of certain deft's to answer complaint is ext. from 4-6-70 to 4-27-70. So ordered. Pollack,J.	
ar.7-70	Filed deft's (Rhoades & Co. & Shields & Co. ANSWER.	CCS
ay.8-70	Filed pltff's notice to take deposition(supplemental) of the, Madison Fund, Inc.--5-18-70--American Investors Fund--5-21-70, Muriel Siebert & Co. --6-2-70.	
ay.15-70	Filed pltff's notice to take deposition of C.L.Gordon on 6-3-70.	
y.19-70	Filed supplemental notice by pltff. to take deposition of D.LeBaron.	
y.26-70	Filed pltff's notice to take deposition of Bank of N.Y. on 6-11-70, and John H. Blewer on 6-18-70. Supp. Issued.	
ay 26-70	Filed Bangor Punta Corp. notice to take deposition of witnesses indicated.	
un.9-70	Filed pltff's supplemental notice to take depositions of J.M.Hartwell & Co. on 6-26-70 on 6-26-70, & Investors Diversified Services on 6-30-70.	
un.12-70	Filed pltff's notice to take deposition of Sheriff Securities Corp. on 6-25-70 & Albert Frank-Guenther Law, Incorp. on 7-7-70/	
FEB.6-71	-BEFORE: POLLACK,J. -NON JURY TRIAL BEGUN. ADJD SINE DIE.	
Mar.9-71	Trial Contd.	
Mar.10-71	Trial "	
Mar.11-71	Trial "	
Mar.12-71	Trial "	
Mar.15-71	Trial "	
Mar.16-71	Trial "	
Mar.17-71	Trail "	
Mar.18-71	Trial "	
Mar.19-71	Trial " Pltff Rests. Deft. Chris Craft moves to Dismiss the Counterclaim--Decision Reserved, Pollack, J.	
Apr.19-71	[illegible]	
Jul.9-71	Filed transcript of record of proceedings dated 3-9,10,11,12,15,16 & 17,18,19, 1971. (Filed in 69 Civ 2227)	
Dec.10-71	Filed Opinion #38097: The complaint is dismissed for failure to sustain with credible evidence, the burden of proof cast upon the pltff. The foregoing shall constitute the findings & conclusions, required by F.R. Civ. P. 52 (a). So ordered. Pollack,J.	
	Judgment Ent. Clerk. Mailed notice	Ent.12-13-71
Dec.10-71	Filed agreed findings of fact relating to claims of Bangor Punta Corp. as pltff. in 69 Civ 2354:MP and of Piper Aircraft Corp. as counter, claimant in 69 Civ 2227:MP contained in deft's exhibit AG.	
Jan 6-72	Filed pltff's notice of appeal. -mailed copies.	
Jan.12 70	Filed pltff's notice to take deposition.	
Feb.17 70	Filed pltff's supplementary notice to take depositions	
Feb 7-72	Filed stipulation that said first amended complaint dated [illegible] from said clerk's files and that said first amended complaint shall be a part of the record on appeal in this action and may be transmitted to the Court of Appeals for the Second Circuit as part of the record on appeal.	

S.E.C. vs. Bangor Punta Corp.

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70 CIV. 3940

DATE	PROCEEDINGS
Sep. 9,70	Filed complaint and issued summons.
Sep.11,70	Filed Notice of Assignment.
Sept.23-70	Filed Request pursuant to F.R.C.P. Rule 34
Sept.23-70	Filed Notice of appearance for defendant.
Oct 5,70	Filed pltff notice to take deposition of deft on 10-15-70
Oct 5,70	Filed response of pltff to request to produce made by deft.
Oct.15-70	Filed ANSWER to complaint.
Oct 15,70	Filed stip and order that time of defts to Answer the complaint be extended to 10-14-70 Pollack J.
Oct.19-70	Filed Request to Produce Documents.
Nov.4-70	Filed Order to strike the "first complete affirmative defense" and the "second complete affirmative defense" in defendant's answer to complaint. Pollack,J. (mailed notice).
Nov.4-70	Filed Notice of Settlement and Order. Ordered that the Commission produce for inspection and copying by defendant,etc. transcript of examination of John M. Coward taken on 6/12/70, etc.etc. Pollack, J.
Jan.28-71	Filed transcript of Record of Proceedings of Nov.30,1970.
Feb.6,71	Trial Begun. Trial Adjourned Sine Die. before Pollack,J.
Mar.9-71	Trial continued, plaintiff rests.
Mar.10-71	Trial continued.
Mar.11-71	Trial continued.
Mar.12-71	Trial continued.
Mar.15-71	Trial continued.
Mar.16-71	Trial continued.
Mar.17-71	Trial continued.
Mar.18-71	Trial continued.
Mar.19-71	Trial continued and concluded. Defendant rests and renews the motion previously made to dismiss the complaint. Decision Reserved.
Apr.19-71	Filed transcript of Record of Proceedings of Feb. 6, 1971. (Filed in 69 Civ. 2227 Also)
Jul. 9-71	Filed transcript of record of proceedings dated 3-9,10,11,12,15,16, 17,18,19,1971 (Filed in 69 Civ 2227 also)
Aug.25-71	Filed Findings & Opinion #37566: Securities & Exchange Commission asks, the court to enjoin Bangor from violating the securities Act of 1933 & the Securities Exchange act of 1934 & to order Bangor Punta, to make an offer of rescission to holders of Piper Stock who exchanged their shares for securities of Bangor Punta,pursuant to, an exchange offer of July, 1969. Accordingly, the requested injunction is denied. The foregoing shall constitute the findings & conclusions required by F.R. Civ P. 54(b). Submit decree in, accordance with these findings on 15 days notice. So ordered. Pollack,J. Mailed notice.
SEPT 17 71	Filed MEMORANDUM by Pollack J. --"The application to reopen the record and for additional findings is accordingly denied. So Ordered. Pollack J." m/n
Nov.17-71	Filed Final Decree that judgment on the complaint is entered in favor of the pltff, SEC, and that the request of the Commission for a permanent injunction enjoining deft, Bangor Punta from violating certain provisions of the securities laws is deniedand the general terms & conditions of the offer of rescission to be made by Bangor Punta is as indicated. Jurisdiction of this action is retained by this Court for the purpose of carrying out this Final Decree--Pollack,J. Judgment ent.--Clerk m/n ent.11-18-71
NOV 17 71	Filed Letter from Webster, Sheffield, Fleischmann, Hitchcock & Brookfield to Pollack, J. dated Nov. 16 1971.

See Page # 2

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110 Rev. Civil Docket Continuation ASSIGNED TO POLLACK J.

ATE	PROCEEDINGS	Date Order or Judgment Noted
17 71	Filed Memorandum in support of judgment proposed by pltff S.E.C.	
17 71	Filed Memorandum on Settlement of Judgment by Pollack, J. m/n	
71	Filed Pltiff's Notice of Appeal from the final decree entered on 11-17-71. Copy mailed.	
72	Filed Deft's notice of cross-appeal from the final decree entered on 11-17-71. Copy mailed. ($5.00)	
22 70	Filed Summons & entered Marshal's return - Served David Wallace on 9-17-70; Unable to serve Bangor Punta Corp. 9-10-70. (entered on Jan 10-1972)	

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

CHRIS-CRAFT INDUSTRIES, INC., *Plaintiff*, v. PIPER AIRCRAFT CORPORATION, *et al.*, *Defendants.*	69 CIV. 2227 (MP)

OPINION

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POLLACK, *District Judge:*

The Context of the Case

This case and its companion cases[1] arise out of the unsuccessful attempt of Chris-Craft Industries, Inc. (Chris-Craft), a diversified manufacturer of recreational products, to secure control of Piper Aircraft Corporation (Piper), a leading manufacturer of light aircraft. The Chris-Craft takeover attempt was resisted by Piper and by a competitor for the control, Bangor Punta Corporation (Bangor Punta), which eventually succeeded in acquiring more than 50% of the outstanding Piper shares. The bulk of Chris-Craft's complaints is based on charges that

[1] *Bangor Punta* v. *Chris Craft*, U.S.D.C. S.D.N.Y., 69 Civ. 2354 (MP), which is being decided this day; and *SEC* v. *Bangor Punta, et al.*, 331 F. Supp. 1154 (S.D.N.Y. 1971) (Pollack, *J.*).

Bangor Punta's success was achieved and Chris-Craft's failure and its asserted damages were caused by deception of the Piper shareholders and of Chris-Craft in violation of various provisions of the federal securities laws and regulations.

Only a minor segment of the case involves charges that Chris-Craft was directly deceived by Piper. The balance of the case deals with charges of deceptions alleged to have been committed by Piper and Bangor Punta on public holders of Piper stock to induce them not to accept Chris-Craft's offers to acquire their stock by purchase or exchange. Chris-Craft claims also that Bangor Punta privately acquired three critical blocks of Piper stock during the pendency of an exchange offer in violation of an SEC Rule.

The contest for control of Piper was sophisticated and hard fought. The contenders were men accustomed to the handling of vast sums of public capital, were assisted by skilled professionals and were themselves seasoned in corporate tactics. It is not hard to detect personal overtones which added some passion and urgency to the contest. In addition, the conduct of both sides invoked the attention of the SEC and the New York Stock Exchange.

Thus, neither side can approximate itself to the position of an average public investor for whose express benefit, in dealing with others of superior knowledge (or the capacity to gain it), skill and resources, the law was designed. The Court does not intend to imply that contests for corporate control are to be unmediated by standards properly applicable under common law, federal legislation or regulation. However, substantial justice cannot be done by mere mechanical application of standards evolved to correct the imbalances of knowledge, skill and capacity for self-protection which so often occur in securities transactions

between members of the public and professionals. Nor can the Court be indifferent to the ultimate source from which the damages are claimed, in effect. (See *infra*, 35-37).

The Major Events

Piper stock was listed on the New York Stock Exchange. There were 1,641,890 shares outstanding. Chris-Craft began purchasing Piper stock just before the end of 1968. By January 21, 1969 Chris-Craft had acquired 102,600 shares of Piper stock on the New York Stock Exchange. On the next day it increased its holdings by purchasing 101,100 shares at $65 per share from Technology Fund, a midwest-based mutual fund; this made Chris-Craft's holdings total 13% of the issue. The market for the stock was then in the low fifties. On January 23, 1969, Chris-Craft announced a cash tender offer for Piper shares of $65 per share and it obtained 304,606 shares through tenders. It also bought an additional 38,000 shares approximately bringing its holdings by February 3, 1969, to 547,106 shares, a number barely short of one-third of the shares outstanding, at a cost of $34,677,000.

The Piper management (in essence the Piper family), which held some 31% of the outstanding Piper stock, reacted to the Chris-Craft tender offer by a communication to shareholders late in January to dissuade them from accepting the Chris-Craft tender offer. One of its statements complained of by Chris-Craft was that the Piper management considered the Chris-Craft $65 tender price inadequate. Chris-Craft charges that this was a misleading statement, based on the facts that Piper's investment bankers, First Boston Corporation, had advised Piper that a $65 price was fair and, furthermore, that on January 29, Piper had announced an agreement to sell 800,000 unissued Piper shares to Grumman Aircraft Company at $65 per

share.[2] The Grumman agreement was not consummated and the additional shares were not issued.

On February 27, Chris-Craft filed with the Securities and Exchange Commission ("Commission") an S-1 registration statement as a step in a proposed offer of exchange of a Chris-Craft package of securities for Piper stock. (The statement did not become effective until May 15.)

On March 22, Piper issued 469,199 authorized but unissued shares to acquire control of two companies, viz., Southply, Incorporated and United States Concrete Pipe Company of Florida. Apart from increasing the number of shares outstanding, these acquisitions could make Piper less attractive to Chris-Craft since the Pipe Company was not in the recreational field and ownership of Southply, a speedboat manufacturer, might bring Chris-Craft into conflict with antitrust law. However, Piper rescinded both of these acquisitions within a short time. Piper had failed to comply with its listing agreement with the New York Stock Exchange by issuing such a block of shares before seeking the approval thereof of its stockholders. This omission led the Exchange to refuse the listing of the newly issued shares, to suspend trading in all Piper shares on the Exchange and to initiate delisting proceedings.

Following the rescission of both of these acquisitions, the Piper family revived negotiations with Bangor Punta, begun early in January, toward securing a defensive merger between Piper and Bangor Punta.

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[2] Part of the agreement, not mentioned in the announcement, was an option in Grumman to "put" the shares back to Piper after six months at Grumman's cost plus interest. Piper insists that the "put" was part of an overall understanding that the proposed sale was a step in a possible Grumman-Piper merger, failing which Grumman might not be interested in a holding of Piper stock. The "put" was described in Piper's application to list the additional shares on the New York Stock Exchange.

The discussions were fruitful. The Piper family agreed to exchange its 501,090 shares for a package of Bangor Punta securities and Bangor Punta agreed to use its best efforts to acquire a majority of the outstanding Piper shares. Pursuant thereto, on May 8, 1969, Bangor Punta and Piper issued a release which made the usual joyful anouncement of a fitting marriage, stating that the Piper family would receive Bangor Punta securities for their Piper shares and containing the following potent message:

> Bangor Punta has agreed to file a registration statement with the SEC covering a proposed exchange offer for any and all of the remaining outstanding shares of Piper Aircraft for a package of Bangor Punta Securities to be valued in the judgment of The First Boston Corporation at not less than $80 per Piper share.[3]

Chris-Craft has attacked this release and has attacked also the registration statement referred to in the release. We deal later with those issues.

Bangor Punta entered the battle with several considerable advantages. It was sponsored by the management of Piper, it could look forward to the Piper family block[4] and, significantly, it alluded to a value figure of $80, exceeding

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[3] Shortly after this release was issued, the Commission, deeming the release to be a gun-jumping offer by Bangor Punta, sought in the U. S. District Court for the District of Columbia an injunction to prohibit further similar releases before effectiveness of the Bangor Punta registration statement. Bangor Punta and Piper, without admitting any of the allegations, consented to the issuance of an injunction.

[4] One of the issues raised by Chris-Craft respecting Bangor Punta's acquisition of the Piper block relates to a guarantee by Bangor Punta to the Piper family that they would receive $80 for their stock if Bangor Punta acquired control. All parties agree that no similar guarantee inhered in the $80 value statement contained in the May 8 release.

Chris-Craft's cash tender offer and the values to be imputed to the Chris-Craft package. This was a serious blow to Chris-Craft. Accordingly, one day after Chris-Craft's exchange offer became effective, it added $10 to its package. Chris-Craft continued to acquire Piper stock until August, 1969, when it virtually ceased buying the stock. Through its succeeding exchange offers and together with its open market purchases, Chris-Craft had by then obtained 697,495 Piper shares, about 42%, while Bangor Punta, by early September, 1969, ended with slightly more than 50%. The contest for control was over except for the litigations questioning the actions of the parties along the way which has embroiled them in claims and counter-claims.

Chris-Craft's Status Under the Securities Exchange Act

Both sides have argued strenuously the question of Chris-Craft's standing to bring this action. Chris-Craft relies heavily on the language of the Court of Appeals in *Crane Co.* v. *Westinghouse Air Brake Co.*, 419 F.2d 787 (2d Cir. 1969), *cert. denied*, 400 U.S. 822 (1970), as precedent affording it status. Defendants rely on *Birnbaum* v. *Newport Steel Corp.*, 193 F.2d 461 (2d Cir.), *cert. denied*, 343 U.S. 956 (1952) and related cases for the proposition that Chris-Craft has no right to sue.

Chris-Craft's claims fall into several categories, each requiring separate consideration of the question of standing to sue.

(a) Chris-Craft made purchases of Piper stock and claims to have acted on statements of Piper about its important product lines. Even though its purchases were not from Piper, it has standing to assert such claims. *Iroquois Industries, Inc.* v. *Syracuse China Corp.*, 417 F.2d 963, 968 (2d Cir. 1969), *cert. denied*, 399 U.S. 909 (1970).

(b) Chris-Craft seeks damages from Bangor Punta claimed to have resulted from the purchase by the latter of three blocks of Piper stock, totalling 120,200 shares in May, 1969, during the pendency of their competing offers to Piper holders, in violation of SEC Rule 10b-6. Chris-Craft claims that these purchases enabled Bangor Punta to obtain majority ownership of Piper. It is held that Chris-Craft has standing to attempt to establish such a claim.

(c) Chris-Craft claims damages from the defendants on the charges that, during the pendency of Chris-Craft's attempt to take over Piper, Piper and Bangor Punta issued improper press releases and Bangor Punta filed a registration statement with material omissions and misstatements. Chris-Craft, which neither bought nor sold on the basis of the releases or registration, premises its standing to sue thereon on two grounds; one is an exception to the *Birnbaum* doctrine repeated in, *Iroquois Industries, Inc.* v. *Syracuse China Corp.*, 417 F.2d 963 (2d Cir. 1969), *cert. denied*, 399 U.S. 909 (1970); the other is predicated on a recent amendment to the Securities Exchange Act of 1934.

The first theory is that Chris-Craft is in the position of a "forced seller" as a result of Bangor Punta's acquisition of a majority of Piper's stock. Chris-Craft emphasizes the decision of the Court of Appeals in *Crane Company* v. *Westinghouse Air Brake Company*, 419 F.2d 787, 797-98 (1969), *cert. denied*, 400 U.S. 822 (1970).

In *Crane* the Court of Appeals distinguished *Iroquois Industries, Inc. supra*, (decided by the Court of Appeals five weeks prior to *Crane*—with rehearing denied by the Court of Appeals on the very day on which the *Crane* opinion was issued) by pointing out that plaintiff in *Iroquois* (a disappointed contender for control) was neither

a buyer nor a seller, whereas in *Crane,* the disappointed contender was deemed a "forced seller". Chris-Craft claims to be a locked-in buyer which could sell only at a substantial loss, and that it could not under state law (Pennsylvania) resist a merger, should Bangor Punta, as majority holder, elect to effect one.

While the "forced sale" argument here rests on quite different grounds from those expressed by the Court of Appeals in *Crane*, Chris-Craft might be within the realm of reason in asserting itself to be a forced seller, should a merger of Piper be effected under Bangor Punta's control. However, no such merger has been proposed and the "forced seller" basis for standing to sue is in this case as compared with *Crane* of highly dubious validity.[5]

The second theory on which Chris-Craft relies for standing to assert the matters relating to the press releases and registration statement is that Section 14(e) of the Securities Exchange Act affords it a right of action. Section 14(e), 15 U.S.C. §78n(e), provides:

> It shall be unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive, or manipulative acts or prac-

[5] Crane Co's position as a forced seller was deemed to result from the fact that its target, by merging with a product competitor of Crane (Standard) made Crane an involuntary holder in its competitor and vulnerable to antitrust action. Crane thereupon sold out virtually all of the Standard holding acquired in the merger. It may be that one need not have looked beyond the merger itself to these special facts to deem Crane a forced seller. While the exchange effected in a merger has not been traditionally deemed by SEC to be a "sale" for registration purposes, it has been deemed a "sale" for purposes of invoking anti-fraud provisions.

tices, in connection with any tender offer or request or invitation for tenders, or any solicitation of security holders in opposition to or in favor of any such offer, request, or invitation. *The Commission shall, for the purposes of this subsection, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative.* (Emphasis supplied).

This section was added to the '34 Act in 1968. The last sentence was added in December, 1970 (one year following the decision of the Court of Appeals, Second Circuit, in *Crane*).

In *Crane*, the Court of Appeals commented in dictum that Section 14(e) "should serve to resolve any doubts about standing in the tender offer cases, even where an offeror is not, as is *Crane*, in the position of a forced seller." 419 F.2d at 798-99. This comment may find support in *Electronic Specialty Co.* v. *International Controls Corp.*, 409 F.2d 937, 940 (2d Cir. 1969), where the target of a take-over bid, as well as that corporation's shareholders, were accorded standing to sue for alleged violations of §14(e) occurring in the course of a control fight. Judge Friendly stated that the amendment which produced section 14(e), "In effect . . . applies Rule 10b-5 both to the offeror and to the opposition" and added that "except perhaps for any bearing it may have on the issue of standing, [the amendment is] only a codification of existing case law."

The conclusions herein reached as to Chris-Craft's 10b-5 claims will be dispositive of the merits of any claim based on §14(e). Under the circumstances, the Court finds it unnecessary to decide whether §14(e) may be separately invoked by one competitor for corporate control against another.

1. Piper's shareholder letter and release of January 23, 1969.

(a) One of the attacks on these communications centers on the utterance by the Piper management of its view that the $65 Chris-Craft offer was inadequate. While the offer was some $13 above the current market price, it was considerably less than a Piper holder, biding his time, could have received at later stages of the contest.

Chris-Craft insists that the communications could not be read to refer to any inadequacy of the Chris-Craft offer other than in respect to price and—to establish Piper's bad faith and intention to mislead—it points out that

(1) Piper's own bankers had advised Piper that $65 per share was a fair price and

(2) the Grumman agreement contemplated a sale of Piper stock by Piper to Grumman at $65 per share.[6]

Any Piper shareholder with a telephone or a newspaper at hand could compare the current market for Piper shares with Chris-Craft's offer. Thus, if the Piper statement of the inadequacy of the offer were intended to refer to price only it would be more fatuous than misleading. The more rational view is that the statement referred and was or should be taken to refer to other factors—such as Piper's management's views as to company prospects or as to the

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[6] We do not doubt that one of the reasons for the Grumman agreement was the effect its consummation would have on the number of shares outstanding and consequently on the number Chris-Craft would have to acquire to gain control. W. T. Piper, Jr. had no hesitancy in stating that the Grumman transaction "would give us additional shares" and that it "might make the . . . tender offer of Chris-Craft less attractive to our shareholders." A psychological effect may have been intended as well—to discourage Chris-Craft early in the game by facing it with the prospect of a heavier than anticipated commitment to the contest. As noted above, the shares were never issued.

quality of Chris-Craft management, should Chris-Craft acquire control.

That Piper's management refrained in these releases from expressing fully its personal (and in all likelihood unflattering) opinions about Chris-Craft's management does not, in our opinion, fault the communications. And if the statements were intended to convey the impression that to resist Chris-Craft Piper's management would bend its efforts to procure a better alternative for Piper shareholders, the efforts were made and were, in terms of price to tendering shareholders, successful.

Chris-Craft makes the further assertion that it was itself, as a purchaser, misled by the announcement of the Grumman agreement. Chris-Craft claims that an indication that Grumman was willing to pay $65 (in the absence of disclosure of the "put"—see n. 2 supra) helped to justify its own decision to pay that much, indicated that Chris-Craft might have a willing buyer for its block, should it decide to unload, and led Chris-Craft to refrain from exercising its right to withdraw its offer if any material increase in outstanding Piper shares were proposed or made.

While the Court has no doubt that the Grumman agreement, the announcement and their timing were strategic moves, it cannot conclude that the agreement was a sham, or that the "put" provision was anything more than what Piper purports it to be—Grumman's "out" in the event that a Grumman-Piper merger did not materialize. These were all, under the circumstances, rational steps for the Piper and Grumman managements to take and the Court cannot hold that in taking its steps Piper had any special duty to warn Chris-Craft (by disclosing the "put" or otherwise) not to gather comfort from the agreement price of $65 and not to rely on Grumman as a possible dumping ground for its shares of Piper.

Chris-Craft admits that Piper described the "put" aspects of the Grumman agreement fully in its application to the New York Stock Exchange for listing of the additional shares. Chris-Craft's contention therefore that, despite its efforts to obtain a copy of the Grumman agreement, it did not learn of it until April, 1969 when two Chris-Craft representatives were elected to the Board is not worthy of belief and can evoke little more than the additional response that it could have been more sedulous than it was to protect its already heavy and growing investment in Piper.

But the fatal blow to Chris-Craft's credibility on this issue is its action after April, 1969 when it claims first to have discovered the "put" provisions of the Grumman agreement. Between April 1 and August 18, Chris-Craft acquired about 150,000 additional shares of Piper. On May 16 it added $10 to its exchange package to compete with Bangor Punta. Such behavior with knowledge of the facts is inconsistent with a claim that knowledge would have caused Chris-Craft to change its course. Plaintiff's reference to *SEC* v. *Great American Industries*, 407 F.2d 453 (2d Cir. 1968), *cert. denied*, 395 U.S. 920 (1969) (nondisclosure of finders' fees) is, under the circumstances, beside the mark.

(b) Chris-Craft has further criticized the communications for saying that Piper was in a growth industry and expected "to participate fully in this growth". The basis of its attack is in product problems faced by Piper in connection with a model then in development (Pocono) and one already on the market (Twin Comanche). These are discussed at greater length, *infra*. Here it is sufficient to point out that inherent in Chris-Craft's claim are the assumptions (1), that these problems would effectively prevent Piper from participating in the industry's growth—

which it has not proved and (2), that this on-the-run response of Piper's management to Chris-Craft's foray into the Piper stock is to be tested by the standards applicable to a registration statement—a view which this Court rejects.

Chris-Craft's contentions as to the January Piper communications and the Grumman agreement must be and are rejected as unfounded.

2. The May 8th Release

This release is one of Chris-Craft's principal targets. Chris-Craft asserts that the release was in violation of the registration and prospectus provisions of the Securities Act of 1933, especially §*5(c)* (15 U.S.C. §77e(c)). This contention has the support of the SEC, which, in May, 1969, brought an action in the District of Columbia to restrain further releases of a similar character, with Bangor Punta consenting to a decree, and it has the support of the Court of Appeals of this Circuit, which held, in *Chris-Craft Industries, Inc.* v. *Bangor Punta Corporation,* 426 F.2d 569, 573-76 (2d Cir. 1970) that the release violated the registration requirements. The Court of Appeals nonetheless sustained the District Court's refusal to issue a preliminary injunction to prevent Bangor Punta from gaining and exercising control of Piper, but remanded the case for further proceedings.[7]

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[7] Four opinions were written. Judge Waterman wrote the majority opinion for a full court (with Judge Friendly not participating). Judge Moore uttered strong doubts as to the majority's rejection of Bangor Punta's claim that the release was in conformity with SEC Rule 135, 17 C.F.R. §230.135. Judge Anderson, who concurred in the legal conclusions of the majority, expressed separate views as to the materiality of the $80 statement. Judge Lumbard (then Chief Judge) could find no substance in Chris-Craft's legal claims as to Section 5(c), 15 U.S.C. §77e(c), or Rule 10b-6, 17 C.F.R. §240.10b-6 (to be discussed).

While the law of these injunction cases, as contended by Chris-Craft, may be that the May 8th release violated Section 5(c) of the Securities Act, that by no means disposes of the issue in the damage suit here being adjudicated.[8] Since Chris-Craft was not a purchaser of Bangor Punta stock it has no standing to invoke the provisions of Section 11 or 12(2) of the Securities Act of 1933 (15 U.S.C. §§77k, 77*l*(2)) (material misstatements in or omissions from registration statements) or of Section 12(1) of the Act (15 U.S.C. §77*l*(1)) (sales in violation of the registration requirements). The plaintiff's claim, to be actionable in this damage suit, must rest on other grounds.

As the Court of Appeals indicated, embodying the substance of the May 8 release in a full registration statement might have served to dispel possible erroneous interpretations of the release by those to whom it was addressed and

> "... would have eliminated the possibility, perhaps the probability, that some persons would have construed the $80 figure as referring to market value when that value was neither accurate nor intended." *Chris-Craft* v. *Bangor Punta,* per Waterman, J., 426 F.2d at 575.

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[8] The issue in the "case" before the Second Circuit was whether an injunction should issue. The denial of an injunction was affirmed and it was left to the Trial Court to determine what, if any, consequences were to flow on remand from the views of the Court of Appeals as to the application of Section 5(c), 15 U.S.C. §77e(c), of the Securities Act and Commission Rule 10b-6, 17 C.F.R. §240.10b-6 under the Securities Exchange Act. The case before the District of Columbia Court was also one involving injunction, not damages, and Bangor Punta's consent to an order may well have been grounded on considerations other than the merits of the SEC's action. The "case" tried before this Court is radically different from the "case" considered on the appeal to the Second Circuit. Sometime after the decision on appeal, at a pre-trial hearing, Chris-Craft elected to abandon and announced the withdrawal of its claim for injunctive relief and stated that the plaintiff's sole claim was one for damages and accordingly that is the claim which is to be decided here.

It must be borne in mind that this is not an action by a former Piper shareholder who exchanged his stock for Bangor Punta securities, nor is it a suit for an injunction and equitable relief.

This is a case by a disappointed contender for control attempting to invoke a registration requirement designed for the protection of the public in order to obtain damages for itself because of a premature offer to sell. Yet Chris-Craft does not point to any damage to Piper holders occasioned by the premature release, nor has it adduced any evidence that the release was anything but true when taken in its own terms—as a statement that it was Bangor Punta's intention to offer a package which would be worth $80 in First Boston's judgment.[9] Even if the release were taken as a representation of future values, it should be noted that actual values reached by the Bangor Punta package were so close to $80 as to render any variance *de minimis*.[10]

Any claim of Chris-Craft that the violation of Section 5 *per se* induced enough Piper holders to accept Bangor Punta's offer to tip the balance of control in Bangor Punta's favor must be supported with proof that this resulted from the absence of the information which a full reg-

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[9] The Court is familiar with instances in which exchange offers contemplate, and describe, formulas guaranteeing a market value for the securities to be given in exchange for the target company's stock. Such descriptions are common and leave no doubt as to their intentions. The language of the May 8 release could not be confused by reasonable men (much less professionals of the purported stature of Chris-Craft's witness on the point) with offers intending or implying guarantees of market value.

[10] Based on various alternative methods of valuing the Bangor Punta package in the week following July 23, five days after effectiveness of the Bangor Punta exchange offer, the Bangor Punta package had a high market value of $79.93 and a low of $73.37. By contrast, using the same bases, Chris-Craft's package in the period had a high of $75.50 and a low of $63.25.

istration statement and prospectus would have contained. Chris-Craft has made no such showing. Moreover, a showing that the acquisition of a particular block was enough to give Bangor Punta control would not by itself constitute proof that control would have fallen to Chris-Craft if Bangor Punta had failed to acquire that particular block. While the delay which might have occurred in the processing of a full registration statement by Bangor Punta might have given Chris-Craft extra time to forage about for Piper stock while Bangor Punta was preparing its statement for filing, Chris-Craft has adduced no proof that it was disadvantaged in this regard. *Cf.* 426 F.2d at 573.[11]

Chris-Craft did respond to the May 8 release by raising its bid. Its cost of acquiring Piper stock was thereby directly and immediately increased. But everything in this record is consistent with the conclusion that Chris-Craft would have done the same thing even if the substance of the release had been embodied in a fully cleared prospectus. There is nothing in this record which shows that the release was, in intent or effect, false or misleading as to Chris-Craft or the public.[12] Any increase in Chris-Craft's costs occasioned by the release was occasioned by its substance and not by the absence of a registration statement. Chris-Craft fully understood what the release was meant to convey. Chris-Craft is not entitled in this suit to the

[11] "We do not understand Chris-Craft to allege that prior misdeeds of Bangor Punta so determined the course of the competition for shares after the date of the decision below that Chris-Craft was placed at any real disadvantage."

[12] It must be borne in mind that the fact that a statement violates Section 5 of the Securities Act, 15 U.S.C. §77e, does not necessarily connote that the statement is either false or otherwise misleading within the meaning of Rule 10b-5 upon which Chris-Craft relies. A thoroughly adequate disclosure—even a full registration statement—used in offers to sell before a required filing violates Section 5.

recovery of damages under Rule 10b-5 for the violation of Section 5.

3. The Bangor Punta Registration Statement[13]

Chris-Craft complains of the Bangor Punta registration statement covering the package of securities it was offering in exchange for Piper stock, alleging that material falsity in the statement was part of the scheme to divert Piper holders away from Chris-Craft.

The principal attack is on the figure at which Bangor Punta carried its holdings (almost 100%) of the Bangor and Aroostook Railroad (BAR). Bangor Punta carried the BAR stock on its books at $18.4 million—an unconventional figure in terms of transactional accounting, and one with a checkered history.

Historical cost of the BAR stock, less depreciation and other accounting adjustments, was $29.8 million. In 1965, in view of a then possible sale of BAR, Bangor Punta wrote the asset down to some $8 million. That sale did not materialize and the carrying figure was again revised (this time upward) to reflect an $18.4 million valuation of the BAR investment by investment bankers. The book increase resulting from this revaluation was credited directly to earned surplus (bypassing the income accounts).

There is no dispute as to this series of adjustments. The $18.4 million carrying figure is, however, attacked as materially misleading in view of a sale of Bangor Punta's interest in BAR, at $5 million (and additional contingent consideration) which did occur in October, 1969, a few

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[13] A fuller discussion of this issue is contained in this Court's opinion in *SEC* v. *Bangor Punta, et al.*, 331 F. Supp. 1154 (S.D. N.Y. 1971) (Pollack, *J.*). Only high-light facts are here discussed.

months following effectiveness of Bangor Punta's registration of its Piper exchange package.

Chris-Craft asserts that the agreement to sell the road at that figure existed earlier and should have been reflected in Bangor Punta's registration statement. The charge is that Bangor Punta postponed formal contract and closing to avoid having to reflect in its registration statement a book loss of $13 million on the sale.

In *SEC* v. *Bangor Punta,* n. 13 *supra,* this Court concluded that there was no substance in similar allegations by the SEC regarding the BAR matter. We held, however, that the registration statement was unintentionally in error in failing to disclose the circumstances which rendered Bangor Punta's carrying figure of the BAR holding obsolete and misleading absent such disclosure. An injunction against further violation of the securities laws was sought by SEC in that case but was denied. However, the Court ordered that shareholders who accepted the Bangor Punta exchange offer be given an opportunity to rescind their exchange should they elect to do so because of the registration error. This result expressed the principle that a registration statement with a misleading effect should be corrected for those to whom it related, whether or not the error was made with intent to mislead.

But that result does not conclude the issue here. This is not a suit by a Piper shareholder claiming to have been damaged by the error in respect to the BAR or any other matter pertaining to the registration. Chris-Craft did not rely on or purchase under the registration statement filed in connection with the exchange of Piper shares for Bangor Punta securities and, for the following reasons, we cannot conclude that plaintiff merits, under the circumstances, any recovery under federal law on this branch of the case.

Chris Craft's complaint with respect to the Bangor Punta statement is not based on the provisions of the Securities Act expressly designed for such complaints. Secs. 11 and 12, 15 U.S.C. §§77k and 77*l*. It does invoke the broad provisions of Section 10, 15 U.S.C. §78j and Rule 10b-5, 17 C.F.R. §240.10b-5, under the Exchange Act, and of Section 14(e), 15 U.S.C. §78(n)(e), under that Act. It thus presents us with the question whether and to what extent these general provisions can fairly be construed to override the more specific ones prescribed to implement private actions in complaint of registration statements.

We have no doubt that a violation of the registration requirements can, also, be a violation of Section 10b(5) and 14(e) of the Securities Exchange Act. But the mere fact of a violation of registration requirements under the '33 Act does not automatically trigger Section 10b and Rule 10b-5. The reasons and basis for invoking the '34 Act provisions must exist independently. The essentials are material deception, some form of scienter and a causal relation between the deficiency and the harm complained of. These essential elements have not been established in this case. At a minimum, neither a form of scienter nor proof of causal effect was established here.

Chris-Craft does not, in this Court's view, stand in the position of the plaintiff in *Mills* v. *Electric Autolite*, 396 U.S. 375 (1970) as being entitled to ask the Court to disregard traditional requirements that a causal connection be shown between the claimed violation and the injury. The attack in *Mills* was on a proxy statement which did not adequately disclose the true interest of directors who recommended a merger. This omission directly affected the shareholders on whose behalf the suit in *Mills* was

brought.[14] It was in that particular context that the Supreme Court deemed sufficient a set of facts under which shareholders *could* be misled.[15] This does not aid Chris-Craft as it is seeking to recover because of the effect which a misstatement allegedly had on third parties.

A Piper holder's decision to tender to Bangor Punta and Chris-Craft's failure to acquire the shares of such a holder cannot be held to be so clearly tied to the registration statement as to obviate the need for proof which would, at least, indicate a causal connection producing damage to Chris-Craft.

Chris-Craft was indeed a Piper shareholder. But it did not exchange any of its Piper shares for Bangor Punta. Its complaint is solely that of a defeated contender for control and it has asked this Court for a money award in the absence of evidence establishing a reasonable probability that its defeat and damage were connected with the claimed violations. There is no proof that a single exchanging Piper shareholder would have refrained from the exchange *and* taken an offer for his shares from Chris-Craft instead of that from Bangor Punta. In a damage suit, as distinct from one for equitable relief, such proof is essential to sustain a 10b-5 claim. In effect, Chris-Craft seeks the windfall of a punitive award against Bangor Punta by assuming the role of defender of the public

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[14] See, *J. I. Case Co.* v. *Borak*, 377 U.S. 426, 428 (1964), ("We consider only . . . whether §27 of the Act authorizes a federal cause of action . . . to a *corporate stockholder* [arising from use of a misleading proxy statement]" (emphasis added)).

[15] "Where there has been a finding of materiality, a shareholder has made a sufficient showing of causal relationship between the violation and the injury for which he seeks redress if, as here, he proves that the proxy solicitation itself, rather than the particular defect in the solicitation materials, was an essential link in the accomplishment of the transaction." *Mills*, 396 U.S. at 385.

interest in the purity of the registration process. This role has already been assumed by the Commission and we could well expect it to be assumed by exchanging Piper holders if there were material harm to them.

Both *Crane* and *Mills, supra,* indicate that in a proper case "tendency to result" may be as good coin as "result" and "could" be as good as "did" in establishing a right of action. The evidence does not support a notion that the Bangor Punta registration statement presents such a case. Despite the language of *Crane,* the facts indicated that blatant manipulation (overt buying and covert selling) was used to "paint the tape" as Court of Appeals Judge Smith said. By this means a competitor for control (Standard) was able, on the crucial days of Crane's tender offer, to raise the price of target company (Westinghouse Air Brake) stock to a level which assured defeat of Crane's campaign. The character of the violation and the clear causal nexus were crucial to the *Crane* result. These characteristics have not been demonstrated here. In *Mills,* as pointed out *supra,* the suit was on behalf of and for protection of the class to which the proxy material was addressed and for which the proxy rules were designed.

Granting to Chris-Craft full standing to raise the issue of falsity in the Bangor Punta registration statement would, in this Court's view, permit it to do no more than it has done here—attempt to show what it has not been able to show, that as a matter of substance the claimed violations entitled it to money damages.

Nor does Section 14(e) in any way alter the result on the merits. Accepting, on its face, the dictum of the Court of Appeals in *Crane* that Section 14(e) "should serve to resolve any doubts about standing in the tender offer case,

even where an offeror is not, as is *Crane,* in the position of a forced seller", 419 F.2d at 798, leaves open the questions of how the substantive standards of Section 14(e) are to be applied and what levels of proof are required to evoke their application

Section 14(e) virtually tracks the language of Rule 10b-5, with certain notable exceptions, and our 10b-5 conclusions are dispositive of the issues as raised under Section 14(e). The differences in language are significant. Section 14(e) refers to "fraudulent or manipulative acts or practices" whereas Rule 10b-5 makes unlawful "any act, practice or course of business which operates *or would operate* as a fraud or deceit on any person" Rule 10b-5(c) (italics added), and contains a prohibition against employment of "any device, scheme or artifice to defraud", Rule 10b-5(a) (language not present in Section 14(e)). In the context of the facts of this case, Section 14(e) adds no weight to contentions of Chris-Craft that it need not establish a nexus between the violations it charges and the damages it claims to have suffered.

In addition to the charge of deficiency in the registration statement based on the BAR carrying figure, Chris-Craft has alleged the failure of the statement to reflect the terms of outstanding institutional loans, the relatively favorable treatment to members of the Piper family in the exchange (see n. 4 *supra*) and a guaranty to a group of Piper holders (the "Bolles" group), ostensibly for tax purposes, of a resale price for the Bangor Punta package of not less than 32½% of the value thereof at the close of the exchange. The Bangor Punta prospectus, while it did not pinpoint each of the alleged deficiencies made it more than amply clear that special treatment was being afforded by Bangor Punta to management personnel of Piper—so that the willingness of these large holders to effect the exchange

for Bangor Punta may have been conditioned by their personal advantages as well as their views as to the best interests of Piper. Thus Chris-Craft's charges, in essence that this motivation was not disclosed, resolve themselves into a dispute over adjectives. None of the registration errors, including the BAR item, went beyond mere negligent omission or misstatement of fact.

4. Application of Rule 10b-6

SEC Rule 10b-6 interdicts bids for or purchases of a security by or on behalf of the issuer of a security if the security is "the subject of . . . [a] distribution". Included in the prohibitions are bids for or purchases of "any right to purchase any such security".[16]

Bangor Punta made three block purchases of Piper shares during the pendency of its exchange offer. It purchased 78,600 shares from Fund of Funds Proprietary Fund, Ltd. (Proprietary) and two blocks, totalling 41,600 shares, from Bay Securities Corporation and American Securities. Chris-Craft claims that all three blocks were purchased in violation of the Rule. Bangor Punta claims the benefit of an exemption from the operation of the Rule for the purchase from Proprietary. Rule 10b-6(a)(3)(2), 17 C.F.R. 240.10b-6(a)(3)(ii)(1971).

The application of the prohibitory provisions of Rule 10b-6 is not before us for *de novo* decision. The Court of Appeals has ruled that Bangor Punta's purchases violated the first sentence of the Rule. However, it left open two vital questions to be decided on the remand. One is whether the exemption contained in paragraph (a)(3)(2) of Rule

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[16] There is no dispute that, under the circumstances of this case, Piper stock was, within the meaning of the Rule, a "right to purchase" Bangor Punta stock.

10b-6 is applicable. The other is the determination of what remedy is appropriate.

Paragraph (a)(3)(2) of Rule 10b-6 exempts

> unsolicited privately negotiated purchases, each involving a substantial amount of such security [in distribution], effected neither on a securities exchange nor from or through a broker or dealer.

As stated above, Bangor Punta claims an exemption from Rule 10b-6 only for the Proprietary block. A literal reading of the exemption requires a finding that the Proprietary purchase, like the others, was not exempted.

Proprietary's functions appear to have been solely to execute transactions for its associated mutual funds.

The Proprietary purchase followed a visit by a Bangor Punta executive with officials of Proprietary in Nassau, and it appears further that Bangor Punta made a payment of 75¢ per share to London & Dominion Trust Company, Ltd., which acted as nominee for Proprietary's Piper holding.[17] Absent any other cogent explanation for the visit the facts seem to point fairly at a solicitation of the purchase from Proprietary as the reason for the visit. It is so found.

The Court has searched for substance in the 10b-6 contention behind the technical violation, in the context of a

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[17] Chris-Craft claims that this was a commission payment. Bangor Punta asserts that it was a fee. Resolution of this issue is unnecessary. Commission payments are not prohibited by the exemption (except by implication from the exclusion of purchases through a broker). The status of the seller as broker-dealer as well as the "solicitation" involved in the Nassau visit are in themselves enough to deprive the transaction of an exemption under a literal reading of paragraph (a)(3)(2) of Rule 10b-6.

claim for damages rather than in a suit for injunction.[18] This search has not revealed such substance as to merit serious consideration of the charge as a basis for money damages.

Despite the failure of Bangor Punta's acts to match the literal prescriptions of the exemption, this Court cannot conclude that Chris-Craft has established any right to recovery under Rule 10b-6. Even granting that the block purchases resulted arithmetically in Bangor Punta's achievement of control, there is no basis for concluding that, absent Bangor Punta's acquisition of these blocks, Chris-Craft would have achieved its goal of control. Thus the record will not support a contention that Bangor Punta should, by reason of violation of Rule 10b-6, compensate Chris-Craft for the latter's failure to gain control of Piper.

1. Chris-Craft was not misled by the purchases of Piper stock effected by Bangor Punta during the "distribution"

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[18] It has been suggested in some quarters that Rule 10b-6 is of doubtful application in cases such as the one at bar. The stock bought by Bangor Punta was Piper stock, not its own. Since it was embarked on a program of purchasing Piper and its self-interest would cause it to seek to do so as economically as possible, it would have no reason to stimulate demand by others for or inflate the price of Piper stock. Its motivation would, therefore, be to adhere to rather than violate the purpose of Rule 10b-6. While Piper stock and not Bangor Punta stock was being purchased, the purchases fell within the Rule because Piper stock was exchangeable for the stock being distributed—i.e., Bangor Punta stock. Any rise in Piper would in effect depress the value of Bangor Punta securities offered in exchange. But even if the price of Bangor Punta's securities were somehow being stimulated that rise would be of no avail to Bangor Punta in the exchange. For market arbitrage would almost immediately raise the price of Piper to align it with the rising price of the Bangor Punta securities offered in exchange.

These considerations, however, are foreclosed to this Court by the Court of Appeals which has found Rule 10b-6 to be violated and which remanded solely to have determined the question of the exemption and the appropriate remedy, if any, in the context of a suit demanding an injunction (which this no longer is).

of Bangor Punta's stock in the Piper exchange. The primary purpose of Rule 10b-6 is to prevent bids or purchases by a distributor of securities which have a stimulating effect on the market. The Rule thus seeks to protect a potential buyer from paying a price for the security in distribution other than that set by untrammeled market demand or from being misled into believing that the market demand is wholly that of independent purchasers. See *SEC* v. *Scott Taylor and Co.*, 183 F. Supp. 904, 907 (S.D. N.Y. 1959). Chris-Craft was not in that position. It knew that significant large blocks of Piper stock were in existence, that Bangor Punta was as anxious as Chris-Craft to acquire those blocks and that Bangor Punta's acquisitions (like its own) would place such blocks at a premium.

2. Was the public misled by Bangor Punta's acts? Here too there is not a scintilla of evidence that any Piper holder was misled. And the absence of such evidence may be explained by the fact that the acts of Bangor Punta here in question, while they did not comply with the literal terms of the exemption contained in paragraph (a)(3)(2) of Rule 10b-6, were nevertheless well within the spirit of that exemption. This is a root factor in determining whether the 10b-6 charge has real substance. For the exemption from the prohibitions of the Rule, in a vital sense, defines the basic purposes of the Rule by delineating the kinds of transactions which have little, if any, tendency to radiate a stimulating effect into the general market.

If we lay the transactions complained of against the intent behind the words of the exemption provisions it becomes clear that the block purchases fell within the intent of the exemption, if not within its words.

(i). Paragraph (a)(3)(2) requires that purchases, to be exempt, must be substantial. The obvious reason for this provision is to prevent fragmenting purchases in order to create the appearance of a spread of demand. There is no dispute that Bangor Punta's block purchases were of a substantial nature. There is no evidence that Bangor Punta fragmented its purchases or otherwise acted to produce or heighten a stimulating effect on the market.

(ii). A distributor's solicitation of purchases, while distribution is in process, may have the same effect as purchases by the distributor. It may create an appearance of demand which is artificial in fact. However, while we have concluded that the visit of a Bangor Punta executive to Nassau was to solicit a sale to Bangor Punta by Proprietary, it was not solicitation calculated to have the effect condemned by the Rule. There is no evidence that it was broadcast, or that it was otherwise radiated into the general market where it might have had the prohibited stimulative effect. And, even if the payment of 75¢ per share to Proprietary's nominee bank were deemed to be part of the inducement to acquire the block, that fact does not change the local and unpublicized character of the entire Proprietary transaction.

(iii). A purchase on an exchange cannot be exempted. The reason is obvious—and casts a consistent light on the prime purpose of the Rule; a purchase on an exchange becomes a broadcast item and consequently one of the components of the price trend of the security. The purchases complained of were not effected on an exchange.

(iv). Purchases from or through brokers or dealers cannot, technically, be exempted. This element of the exemption has the same function as the requirement that the purchase not be made on an exchange. Brokers and dealers

are constantly quoting, broadcasting and varying their quotes with indications of change in supply and demand. Thus a purchase from or through a broker or dealer, even though in the over-the-counter market, may have the same tendency to affect market price. But neither Proprietary (from which 78,600 Piper shares were purchased) nor Bay Securities Corporation (from which blocks aggregating to 21,600 Piper shares were purchased) was a broker or dealer in the conventional sense. Both were "in-house" facilities of mutual fund complexes acting for the funds they served. As such they may well have had the policy of secrecy which characterizes the operations of many funds during the period of acquisition or disposition of blocks. It is a common mutual fund practice to report even significant trades under a "miscellaneous" and unidentified rubric until the intended amount to be purchased or sold has been reached—and then often only in periodic reports after the fact and merely as a change buried in a list of one hundred or more portfolio holdings.[19]

5. Piper Product Problems

We deal here with the complaint of Chris-Craft that, as a purchaser of Piper securities, it relied to its detriment on statements of Piper rendered materially false and misleading because of certain vital omissions.

Piper, in its 1967 and 1968 annual reports and in certain other public statements, had issued optimistic reports about a new development (the Pocono plane) and about a principal product (the Twin Comanche) the latter accounting

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[19] Some time after the occurrence of the events litigated in this case the SEC adopted Rule 10b-13. That Rule interdicts (with exceptions not here pertinent) any purchase by a tender or exchange offeror otherwise than through the tender or exchange. It is a *post hoc* regulation which cannot be applied here.

for a significant portion of its revenues. In fact, both of these products were facing serious problems. The Pocono depended for its successful development on an engine to be created by Avco Lycoming. Lycoming, despite its attempts to create one with the required horsepower, failed to do so. The Pocono project, whose continuation or abandonment was a subject of dispute within Piper, was in fact abandoned by Bangor Punta shortly after it acquired control.

The Twin Comanche, while it was extensively sold and used, had operating characteristics which required especial skill and alertness of the pilot for safe handling. At some time or other various governmental agencies had noted and commented on these characteristics and between its inception in 1962 and May of 1969 the Twin Comanche had been involved in 62 fatal accidents resulting in over 130 deaths. Of the 62 accidents, 29 were the result of stall-spins —a propensity of the plane apparent from prior tests.

Chris-Craft complains of a 1967 annual report which described the Pocono as Piper's "major advanced research project", that indicated that the plane was undergoing flight tests, that deliveries of the plane were expected to begin in 1970 and that plans were in progress to build a plant in Florida for manufacture of the product.

The specific criticism levelled against this report by Chris-Craft is as follows:

> Nowhere was the public cautioned that the plane being tested had only an interim engine, that Avco Lycoming had not yet delivered or manufactured the engine required for the plane, and that the success of the venture hinged entirely on the ability of Lycoming to produce an engine powerful enough for the Pocono to

meet FAA certification requirements or that it had encountered difficulties and delays in doing so.

Piper, on its side, points to statements in its reports and in trade articles which it claims put the Pocono project in its proper perspective as an "experimental project" "being tested". It asserts that at no time until September, 1969, was there a discussion of abandoning the project, let alone a decision to do so. Piper points out also that as late as August, 1969, Lycoming said that it could produce, promptly, the required engine for the Pocono. And the testimony of Bangor Punta's chief executive indicates that cost (as well as engineering) was a significant factor in his decision to abandon the project. There is every indication that if the Pipers had remained in control, the Pocono would not have been abandoned.

We cannot find that Piper's statements, even when viewed in the light of subsequent difficulties and eventual abandonment of the Pocono project, could be deemed materially false as of the time they were made. Chris-Craft denies that it is exercising "hindsight". However, the problems it points to, viewed as of the time of Piper's statements, seem little different from those attending many eventually successful product developments. While it is not easy, in considering the Twin Comanche, to avoid interlacing into the issues of this case the general public policy of air safety, that must, in this Court's view, be done. Chris-Craft has not shown that adjusting the Twin Comanche would be so costly or that limiting the plane to use by experienced pilots would so seriously damage Piper's future as to require it to damage itself by the disclosures claimed necessary to avoid the charge of fraud.

The evidence is convincing that Chris-Craft's original decision to acquire Piper was made without knowledge of

the Pocono and Twin Comanche problems—and avowedly with knowledge of little more than what was carried in standard reference sources available in brokerage offices. Despite the fact that by April, 1969 Chris-Craft had two representatives on the board of Piper it did not, it claims, learn of the Pocono and Twin Comanche problems until September of 1969. By then, its purchasing was over and Bangor Punta was in control.

However, the record affords considerable support for the conclusion that Chris-Craft went into its stock purchasing with no concern about these product problems. The record fairly requires the inference that incidents involving the Twin Comanche and official reports on its operating characteristics could have been timely learned and timely appraised by anyone wishing and able to commit millions to a campaign for control of Piper. The claimed lack of knowledge or notice of product problems is not credited.

Chris-Craft asserts that it relied on Piper's statements (claimed to be misleading because of omissions) respecting the Pocono and Twin Comanche in making its heavy investment in Piper. However, Chris-Craft has not convinced the Court that these products, or what Piper said of them, were considered or material in Chris-Craft's investment decision. To demonstrate the materiality of the Pocono development, Chris-Craft asserts:

> Technology Fund, a mutual fund with no greater expertise about the aircraft industry than Chris-Craft, was Piper's largest record shareholder outside of the Piper family as of January 1969. . . . A Technology Fund research report dated November 19, 1968—more than a month before Chris-Craft's first purchase of Piper—stated, in part:

> At 52 Piper is adequately priced and little appreciation is expected until the anticipated extremely favorable third quarter. Quite possibly Piper could go to 18 times 1969 earnings, which produces a price of 63. However, at that level, it would be fully priced and sale would be in order except that before sale, the Pocono's outlook should be reviewed, as it really dominates Piper's future.

The demonstration shows more than it was intended to. As matters stood when the Technology Fund report was written, the Fund was not misled by Piper's reports. It appraised Piper as "adequately priced" at 52. A price of 63 would justify a sale unless a later review of the Pocono development might indicate otherwise.

Chris-Craft, within weeks after this report by the experts of the Fund, paid the Fund more than $6,500,000 to acquire some 101,000 Piper shares held by the Fund. With no more (and perhaps less) information *at the time* than was then available to the Fund's experts it over-anticipated the Fund's most bullish possibility of market value ($63) based on earnings reports and bought deep into the future of Piper and, it claims, Pocono. The "materiality" of the Pocono development is amply demonstrated by this Fund report, but, significantly, materiality as a possibility to be closely watched, not one to be blindly bought. Chris-Craft did not rely on Piper's statements in this regard.

In balancing equities in suit by an ordinary investor this Court might weigh differently the competing duties of Piper's management: on the one hand, to avoid damaging the company by airing internal problems (which with respect to Pocono did not at the time foreshadow the ultimate abandonment of the project and, with respect to Twin Comanche, were not as irremediable as Chris-

Craft wishes us to believe) and on the other hand, to avoid a misleading effect in its published statements. But Chris-Craft, under the circumstances of this case, does not merit a weighing in its favor of so delicate a set of duties. In effect, Chris-Craft's management is attempting on this issue to enlist the Court's aid in passing over to others the burden of a purported harm to Chris-Craft's shareholders which Chris-Craft's management could well have avoided by reasonable inquiry. The credible evidence adduced in Chris-Craft's favor does not warrant such a result.

The Claim against First Boston

First Boston and Paul L. Miller and Nicholas H. Bayard of First Boston (the "First Boston defendants") were joined as parties defendant herein. On the basis of the record, the Court cannot find that they committed, or engaged in any course of conduct which operated as fraud or deceit upon Chris-Craft or the public shareholders of Piper.

Indeed, were the record to support Chris-Craft's claims with respect to Piper and Bangor Punta (which it does not) the Court would be hard put to find any basis for extending liability to the First Boston defendants.

First Boston, in its capacity as an investment banker, rendered a variety of professional services to Piper Aircraft Corporation, Bangor Punta and members of the Piper family. In each case, substantive decision making power rested with and was exercised by these clients and not First Boston. First Boston was not responsible for the Piper letter to shareholders dated January 27, 1969. There is no evidence that it did more than contribute to the letter a suggestion within its area of expertise (invest-

ment prospects in the light aircraft industries generally), of which plaintiff does not complain.

The suggestions to Piper made by the First Boston defendants in respect to: the cash tender offer by Chris-Craft, the Grumman agreement, the press release concerning Grumman, the U.S. Concrete and Southply transactions, the May 8, 1969 agreement between Bangor Punta and the Piper family, the May 8, 1969 press release in connection therewith, the purchases by Bangor Punta of large blocks of Piper and the prospectuses on the Piper exchange offer, were a legitimate exercise of and limited to professional advice within the area of expertise of First Boston.

The activity of First Boston in the course of its professional relations with Piper, the Piper family and Bangor Punta does not render it responsible or liable for the actions of its clients. The record compels the conclusion that the First Boston defendants acted solely in the furtherance of what they believed in good faith to be the legitimate interests of their clients.

The Relief Requested

The Court of Appeals, with all Judges concurring, affirmed Judge Tenney's denial of a preliminary injunction and the case was remanded to the District Court for further proceedings not inconsistent with the majority's opinion. However, at a pre-trial conference, the plaintiff announced its election on the record to have its case considered as only a straight non-jury damage case rather than an equitable suit for injunction. No such case had been tendered to the Court of Appeals for consideration and the merit of Chris-Craft's suit in support of a damage claim was not before the Court of Appeals.

Chris-Craft acknowledges that its original attempt to have Bangor Punta divested of its majority control was a quest beset with inherent practical difficulty[20] and it gives this as the reason for now seeking damages only. In view of the conclusions reached by the Court on the issues raised by Chris-Craft, it is not necessary to pass on Chris-Craft's theory of computing the damages. However, an analysis of the damage issue here raised will illustrate the anomalous consequences which may flow from according status to sue to disappointed contenders for control, even in cases with more substance and merit than are present in the case at bar.

Chris-Craft evaluates its damages in terms of the appraisal value of its Piper stock in the light of the ability of Bangor Punta to compel a merger at any time. Recognizing the wide disparity of opinion in respect to such value on the part of "experts", Chris-Craft suggests the possible use of the procedure used elsewhere,[21] permitting an aggrieved plaintiff to tender its shares to defendant at cost.

The proximate victims of virtually all the alleged violations of which Chris-Craft complains are one-time Piper stockholders who now hold Bangor Punta stock. These are the very people against whom Chris-Craft wishes us (by a judgment against their company) to assess many millions of dollars of damages in the form of a bail-out of Chris-Craft from its misadventure in Piper.

Were every allegation of Chris-Craft supported by the record, neither reason nor justice would permit such a

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[20] Among other things, Chris-Craft asserts that changes effected in Piper under Bangor Punta control render Piper a different company from that into which Chris-Craft bought.

[21] *Gottlieb* v. *Sandia Amer. Corp.*, 304 F. Supp. 980 (E.D. Pa. 1969).

result. Insofar as the Piper corporation is concerned, the results of assessing damages against it would be equally anomalous. It was the prize in the battle, not a contender. Its equity is held by three distinct groups: Bangor Punta, Chris-Craft, and a small public minority which did not tender shares in the various exchanges proferred. We have already pointed to the reasons for excluding Bangor Punta from the pale of liability. Chris-Craft, of course, would be bailed out if its theory of damages were accepted. This leaves the non-exchanging Piper holders. This is the category of holders intended to be protected. There is no stretch of reason or justice which could conceivably draw them indirectly into the circle of liability. See, *SEC* v. *Texas Gulf Sulphur Co.*, 401 F.2d 833, at 867 (2d Cir. 1968), *cert. denied*, 394 U.S. 976 (1969), *sub nom., Coates* v. *SEC, Kline* v. *SEC.*

However, even properly chosen defendants must be shown to be more than putatively liable. That has not been done with respect to any defendant named by Chris-Craft herein.

While the details of every issue and argument in Chris-Craft's case have not been discussed herein, they have been considered and have not been found to warrant a judgment for Chris-Craft against any of the defendants.

The complaint against the corporate defendants, Bangor Punta and Piper, is dismissed and on the basis of the findings and conclusions herein expressed, the complaint is *a fortiori* dismissed as to all personal defendants.[22]

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[22] The agreed findings stipulated by the parties as such are found even if not fully covered herein, *non constat* many are evidentiary rather than findings of ultimate fact.

Counterclaim of Piper Aircraft

Piper has asserted a counterclaim against Chris-Craft charging that the latter violated Sections 13(d) and 14(e) (as well as 10b) of the Exchange Act.[23] This counterclaim repeats virtually all of the contentions made by the plaintiff in *Bangor Punta* v. *Chris-Craft*, S.D.N.Y. 69 Civ. 2354, which is being decided this day. Piper asks this Court to "fashion an appropriate equitable decree to deprive Chris-Craft of the benefit of its violation."

Piper was the unwilling target of Chris-Craft's bid for control of Piper. To avert what it deemed to be a raid by Chris-Craft, it invited Bangor Punta to compete with Chris-Craft. Bangor Punta acceded and (with the aid of the substantial blocks of Piper stock held by the Piper family and other significant cooperation of Piper's management) it won the contest. While both contestants may, today, be less than happy at the outcome, Piper was the prize, not a contender. The Court is at a loss to envisage any form of equitable (or other) relief to which Piper might in reason and justice be entitled. Piper's case against Chris-Craft, like Bangor Punta's rests shakily on surmise and speculation and much of it, even if sustainable, is irrelevant to any damage which Piper does or could claim.

The counterclaim of Piper against Chris-Craft is dismissed for failure to sustain the burden of proof thereof.

The foregoing shall constitute the findings and conclusions required by F. R. Civ. P. 52(a).

So Ordered.

December 10, 1971

Milton Pollack
U. S. District Judge

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[23] §13(d), 15 U.S.C. §78m(d) (1971); §14(e), 15 U.S.C. §78n(e) (1971); §10(b), 15 U.S.C. §78j(b) (1971).

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Entered 1/23/70

U.S. DISTRICT COURT
FILED
JAN 26 1970
S. D. OF N. Y.

ENDORSEMENT

69 CIV. 2227 (MP)

The motion for a protective order is granted and the motion to require defendant Salgo to answer questions relating to N.M. Voloshen, allegedly employed by Bangor Punta in respect of governmental influence is denied. There appears to be no relevancy of the line of inquiry to the issues framed in this private litigation by the pleadings and none is satisfactorily demonstrated by the moving papers hereon. Even assuming the conjectured conduct of Voloshen in respect of the functions of the SEC, this is not pertinent to the subject matter herein, viz., the claimed liability of Bangor Punta for violating the securities Acts as alleged herein. Unenviable associations of said defendant do not tend to support civil claims against it such as are here asserted. In the absence of a substantial and valid reason for the examination, it would be unjust to deny a protective order to the party examined. This disposition is without prejudice to renewal of the application of the plaintiff on Order to Show Cause.

SO ORDERED.

January 23, 1970

Milton Pollack
U.S.D.J.

69 Civ. 2227

COPY RECEIVED
JAN 14 1970
SULLIVAN & CROMWELL

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

BANGOR PUNTA CORPORATION,

Plaintiff,

v.

CHRIS-CRAFT INDUSTRIES, INC., et al,

Defendants.

69 CIV. 2354 (MP)

OPINION

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POLLACK, District Judge.

POLLACK, District Judge.

This cross action by Bangor Punta, a defendant in Chris-Craft v. Bangor Punta et al (S.D.N.Y. 69 Civ. 2227) decided this day, arises out of the bitter struggle between the two companies for control of Piper Aircraft Corporation. That struggle ended in the marketplace with Bangor Punta in control and continues in the complaints and cross complaints by the parties against each other arising out of their competition.[1/]

The principal facts are set out in this Court's opinion in S.D.N.Y. 69 Civ. 2227. They will be deemed incorporated and need not be repeated at length here.

Chris-Craft sued for damages as the losing contender for control of Piper by reason of Bangor Punta's alleged wrongful acts. Bangor Punta countered by charging, in essence, that because of the wrongful acts of Chris-Craft it paid more than it would otherwise have paid to acquire control of Piper. Both suits were tried together.

1/ Piper, the target company, asserted a counter claim against Chris-Craft in S.D.N.Y. 69 Civ. 2227.

Bangor Punta adduced no proof specifically in its case as plaintiff. It seeks support for its contentions in the record developed in Chris-Craft v. Bangor Punta et al, (S.D.N.Y. 69 Civ. 2227).

This complaint, like that in the companion case, is replete with charges of breach of the requirements of securities laws and rules. Like the other, it has been brought and tried as though any such breach by a competitor automatically creates windfalls for a sophisticated and well-financed contender for corporate control. It must be remembered that this is an action by the willing and winning contender which bought Piper stock with its eyes open, presumably paying what it deemed control of Piper to be worth. The Court has here been especially challenged to maintain its footing in the realities and the equities in searching (in vain) for credible evidence establishing causal connections between alleged violations and actionable damage.

The Contentions

(a) Bangor Punta insists that the plan of Chris-Craft to acquire control of Piper existed before the time when, according to Chris-Craft, the plan was formulated

and that Chris-Craft concealed its true purpose from a registration statement filed with SEC to raise capital for the purchase and from prospectuses legally required to be used during a period when its unrevealed plan to obtain control of Piper was in existence.

We comment here on this contention because it is typical of others in the case. Even if it rested on more than mere surmise, it raises no issue proper to a plaintiff in Bangor Punta's posture. Bangor Punta was not a purchaser of securities issued under the statement of which it complains. There are possible links of relevance between the alleged deficiency in the registration statement and Bangor Punta's campaign. But they are not links to liability of Chris-Craft to Bangor Punta. Thus:

(1) If the registration statement were materially misleading there might be room to argue that Chris-Craft obtained by illegal means the money used to compete with Bangor Punta. There might then be examined the rights of those from whom the money was so obtained. But the Court sees no basis for awarding damages to Bangor Punta because Chris-Craft failed to disclose to its sources of funds its intended use of those funds.

(2) If Chris-Craft did intend to use the proceeds of this registered issue to obtain control of Piper, a disclosure of that fact would have given Piper (and/or Bangor Punta) an earlier opportunity than they had in fact to prepare a counter-campaign. However, Chris-Craft owed no duty to Piper or Bangor Punta to announce its intentions for their benefit. Its disclosure obligations (assuming they existed as alleged) in the prospectus complained of or in 13-D reports, were for the benefit of investors with whom Chris-Craft would be dealing in its campaign for control.[1A/] Bangor Punta does complain of failure to make -- and of inadequate -- 13-D statements. Thus:

(i) It asks us to find that Chris-Craft and the broker it used to buy Piper stock constituted a "group" or "syndicate" whose intentions should have been reported.

(ii) It contends that 13-D statements made by Chris-Craft should have disclosed that (as alleged by Bangor Punta) cash used in Chris-Craft's tender offer was borrowed and that such use of the cash would constitute a default under certain of Chris-Craft's arrangements with its creditors.

1A/ See, GAF Corporation v. Milstein, 324 F.Supp. 1062 at 1070 (S.D.N.Y. 1971)(Pollack,J.) "the Williams Bill concentrated on investor protection goal rather than on providing protection for management's ability to repel raiders."

The first of these contentions is not only far-fetched, but is wholly out of Bangor Punta's reach as a weapon against Chris-Craft. The latter contention would be a dubious one even if made by a Piper stockholder to whom the statement is specifically addressed. For that stockholder either tenders and walks off with cash or remains a Piper holder having no concern with Chris-Craft's relations with its creditors.[2/]

(b) Bangor Punta alleges that Chris-Craft opened a "secret" "numbered" account at a brokerage firm which assisted it in locating and acquiring large institutionally held blocks of Piper. At least one institution (Technology Fund) it is claimed, to which Chris-Craft paid $65 per share for more than 100,000 shares of Piper -- at a time when the market was in the low fifties -- simultaneously made a

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2/ The situation is not the same, of course, in a registration statement covering an offer of exchange. There the accepting holder of target company stock is destined to become an investor in the offering company -- with a strong interest in that company's relations with its creditors.

large purchase of Chris-Craft stock in the open market. The alleged purpose of this allegedly pre-arranged move was to "stabilize or manipulate" the price of Chris-Craft common. Chris-Craft planned to include in its acquisition program an offer of exchange of Chris-Craft for Piper securities. Obviously, a high price for Chris-Craft common would greatly facilitate such an exchange.

(c) Several other institutions (one of which had tendered Piper stock to Chris-Craft for cash during the pendency of a Chris-Craft tender offer) also bought large amounts of Chris-Craft on the open market. In the month shortly before Chris-Craft filed its registration statement to cover its proposed exchange offer, these institutions purchased some 231,800 Chris-Craft shares (more than 17%) of the number outstanding. These purchases caused the daily average of trading on the New York Stock Exchange to increase from 7,500 shares to 23,400 shares. The price of Chris-Craft common, during this month, rose to 45% above the average of its closing prices for the six weeks preceding these purchases.

By mid-1970, with the serious market decline, notably in prices of stocks of conglomerates, the institu-

tions were taking heavy losses. Their liquidations of position, Bangor Punta claims, were designed to do the least damage to the price of Chris-Craft and hence to the progress of Chris-Craft's exchange offer program.

(d) While its cash tender offer for Piper stock was open Chris-Craft was also buying Piper stock in the open market. This was a violation of S.E.C.'s Rule 10b-6 and the Commission, upon becoming aware of what was happening, ordered Chris-Craft to cease these purchases. Thereupon at least one institution (which had previously sold a large block of Piper to Chris-Craft) purchased Piper stock in the open market and tendered the shares to Chris-Craft. Bangor Punta claims the transaction to be a device to have done by others what Chris-Craft could not do itself.

Bangor Punta bottoms its case on Rule 10b-5 under the Securities Exchange Act,[3/] claiming that Chris-Craft's "integrated" bid for control of Piper was in its entirety a "manipulative and deceptive contrivance" whose total effect was to inflate the price of Piper stock and so to damage Bangor Punta as a purchaser of that stock. It cites Eagle v. Horvath, 241 F. Supp. 341, 344 (S.D.N.Y. 1965)

3/ 17 C.F.R. §240.10b-5 (1971)

for the proposition that while a thoroughly legal campaign by Chris-Craft for control of Piper might also have raised the price of Piper stock, it must make restitution for having done the same thing by illegal means.[4/] It cites other cases for the propositions that privity between buyer and seller is not an essential condition for application of Rule 10b-5, Fischman v. Raytheon, 188 F.2d 783, 786 (2d. Cir. 1951)[5/] and that manipulative activities unrelated to the plaintiff and not designed to induce the plaintiff

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4/ Horvath and apposite cases, if at all applicable here, are in an important sense contrary to Bangor Punta's position. Bangor Punta asks us to regard the entire Chris-Craft program as fatally tainted because of alleged violation spots in the program. It does not bear the burden of showing the causal relation between the violations themselves and its damage. Yet, the holding in Horvath is precisely that such a relation is a vital issue. In Horvath a motion for summary judgment in a stockholders' suit was denied because there was, at issue, the question whether an alleged false prospectus in fact motivated stockholder votes on the plan being attacked in the case.

We did not, at Chris-Craft's instance, spread the taint of single alleged violations by Bangor Punta over all of Bangor Punta's campaign. We see no warrant for a contrary treatment of Bangor Punta'a contentions here.

5/ In Fischman, the Court (Frank, C.J.) pointed out the difference in proof required to sustain a Section 11 suit under the Act of 1933 and a Section 10-b suit under the Act of 1934. In the former the plaintiff's burden is to show an acquisition of the direct subject of a registration statement while in the latter, any deceived purchaser relying on a fraud may sue.

to buy or sell are, nonetheless, actionable. Cochran v. Channing Corp., 211 F. Supp. 239 (S.D.N.Y. 1962);[6] Sarlie v. E. L. Bruce Co., 265 F. Supp. 371 (S.D.N.Y. 1967).[7] Characterizing itself as a buyer of Piper "deceived" by the manipulative activity of Chris-Craft, Bangor Punta also invokes Crane Co. v. Westinghouse Air Brake Co., 419 F.2d 787 (2d Cir. 1969)[8], cert. denied, 400 U.S. 822 (1970).

6/ Cochran v. Channing was a suit by a holder of Agricultural Insurance Company stock who sold at depressed prices and alleged that Channing Corporation, the defendant, dominated the Company, formed an undisclosed plan to secure control of it by offering an exchange of stock of another company for Agricultural and by purchasing Agricultural stock at depressed prices caused by lowering Agricultural's dividend and other similar practices. Judge Dawson of this District held the complaint good under Rule 10b-5 against a motion to dismiss for lack of privity. The case cannot support the contentions of a plaintiff in Bangor Punta's posture. It cannot claim itself a beneficiary of any fiduciary obligation of Chris-Craft such as was deemed by Judge Dawson to be owed by Channing to the plaintiff.

7/ Sarlie v. Bruce seems wholly inapposite. It involved a default dismissal of plaintiff's action and concerned itself largely with the measure of damages in a counterclaim by a company (Bruce) whose president (Gilbert) allegedly used misappropriated funds in an attempt to capture control of Celotex Corporation.

8/ Crane v. Westinghouse, is beside the mark. There, the alleged market manipulation was effected for the express purpose of preventing a competitor for control from succeeding in its bid and the facts pleaded showed a distinct causal nexus between the manipulation and its actual and intended result. To suggest that Chris-Craft, itself an avid buyer of Piper, "manipulated" the price of Piper upward and to characterize Bangor Punta as a buyer "deceived" by this manipulation strains even credulity.

Other aspects of Chris-Craft's program are complained of -- quite apart from their place in an overall scheme alleged to be unlawful.

1. The allegedly induced purchases of Chris-Craft common by institutions preceding the Chris-Craft exchange offer are alleged to be manipulations in violation of Section 9(a)(2) of the Exchange Act[9/] which inflated the price of Piper common, as well as that of Chris-Craft. Crane, supra, is cited as authority for Chris-Craft's liability.

2. Bangor Punta has reached into the Investment Company Act of 1940, 15 U.S.C. §80a-1 et seq., in its search for deficiencies in Chris-Craft's program and purports to have found one in Section 17(a), 15 U.S.C. §80a-17(a)(1971) of that Act. The Section (together with relevant Section 2(a)(3), 15 U.S.C. §80a-2(a)(3)) provides that

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9/ Section 9(a)(2), 15 U.S.C. §78i(a)(2)(1971), reads: "It shall be unlawful for any person, ... to effect, alone or with one or more other persons, a series of transactions in any security registered on a national securities exchange creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others."

without an express order of S.E.C.

> Sec. 17(a) It shall be unlawful for any affiliated person or promoter of or principal underwriter for a registered investment company (other than a company of the character described in Section 12(d)(3)(A) and (B)), or any affiliated person of such a person, promoter, or principal underwriter, acting as principal ...
>
> (2) knowingly to purchase from such registered company, or from any company controlled by such registered company, any security or other property (except securities of which the seller is the issuer) ...

> Sec. 2(a)(3) "Affiliated person" of another person means (A) any person directly or indirectly owning, controlling, or holding with power to vote 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; ...

Since, at the time Chris-Craft made its purchase from Technology Fund, supra, both it and the Fund owned more than 5% of Piper, Chris-Craft was an affiliate of an affiliate of an investment company and prohibited from making the purchase without prior order of SEC. No such order was ever requested.

The Merits of the Contentions

Chris-Craft's response to Bangor Punta's charges is to label Bangor Punta's case as "sheer fantasy" and its inferences as "Kafkaesque logic". Chris-Craft's

attacks on the evidentiary underpinning and legal support of Bangor Punta's case would require a minute consideration of the record and of precedents cited were this Court to accord to Bangor Punta the status of damaged innocent which it claims for itself.

But Bangor Punta cannot wear that mantle. It was the willing and winning contestant in a hard fought and (for both sides) enormously expensive struggle for control.

This Court will readily agree that Bangor Punta paid more to acquire control of Piper than it would have if Chris-Craft had not, by the time Bangor Punta entered the contest, already been well on its way in acquiring Piper stock. Indeed the possibilities are that, if Chris-Craft had not already shown itself to be so powerful a bidder for control, Bangor Punta's cost would have been zero. For the record is ineluctably convincing that Bangor Punta came in at Piper's urging and specifically to resist Chris-Craft.

In dealing with Chris-Craft v. Bangor Punta et al, supra, this Court made it clear that it would not, at the

behest of a disappointed contender in a battle for corporate control, necessarily take the same view of the requirements of the securities laws and rules as it does in cases of claimed injury to the average public investor. These considerations apply with even greater vigor to actions by the winner complaining that he was forced to overpay.

Bangor Punta's claim of "integrated" and "concerted" efforts by "coparticipants" has no more weight than similar language aimed by Chris-Craft, as plaintiff, against Bangor Punta as defendant. Chris-Craft has amply disposed of several of Bangor Punta's factual contentions (as e.g., its charge that an originally submitted and then deleted portion of Chris-Craft's registration statement to cover its debenture issue in December 1968 "evidenced" an undisclosed intention to acquire Piper with the proceeds). But even taking on their face each of Bangor Punta's charges of violations leaves us asking why Bangor Punta should be made a money beneficiary. The price it paid for Piper it paid with open eyes. The rapport between it and the Piper management should have given it more easy access to information about Piper than was available to Chris-

Craft -- even with two Chris-Craft representatives on the Piper board. Its inducement to pay the prices it did for Piper control was not in any one or combination of the violations it seeks to lay at Chris-Craft's door step. The inducement was its own determination to have control.[11/]

However, even if Bangor Punta were an apt plaintiff to raise the shield of the securities laws and rules for its protection, this Court would have great difficulty in finding -- on facts and law -- that a convincing case has

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11/ The disposition of this case and of Chris-Craft v. Bangor Punta et al, S.D.N.Y. 69 Civ. 2227 eliminates any requirement for findings as to damages. Were such findings necessary, this Court could give no weight to the unsubstantiated and cursory evidence presented on behalf of Chris-Craft. On the other hand, the careful and well-documented analysis presented by the expert for Bangor Punta was persuasive in the main on the issue of fair market value of Piper stock in or about May, 1969 during, but uninfluenced by, the contest for control and fair market value uninfluenced by extraneous factors at the time of the trial herein in March, 1971.

been made out. Bangor Punta did not carry its burden of persuasion on the issues presented in its case against Chris-Craft. Its basic claim that Chris-Craft "manipulated" upward the price of Piper stock asks us to assume that Chris-Craft massaged the market against its own interest -- since Chris-Craft was in an acquisition campaign -- and that Bangor Punta, amply aware of what Chris-Craft was doing and bidding Chris-Craft up, was somehow victimized by this massaging.[12/] The claim is patently untenable. Its claim that purchases of Chris-Craft common by institutions were arranged for manipulative or evasive reasons are pure surmise -- such basis as they do have is purely circumstantial and lacks the persuasive power needed to support such charges. The charge that in disposing of Chris-Craft holdings the institutions acted to produce the least possible disturbance of price does no more than charge the institutions with ordinary prudence in their management of their affairs.

12/ The willingness of an innocent buyer to pay a manipulated price does not deprive him of a right to complain of the manipulation. But the essence of a manipulation is the execution of transactions affecting prices or actual or apparent market activity for the purpose of inducing others to buy or sell. While Chris-Craft's initial and subsequent bids raised the prices of Piper stock these bids were for the bona fide purpose of acquiring stock for itself, not to induce others to buy the stock.

The charge of violation of Section 17(a) of the Investment Company Act, 15 U.S.C. §80a-17(a)(1971) has some surface plausibility but as little substance as the others. That section can apply to the Chris-Craft-Technology Fund transaction only upon a most abstrusely technical reading. It is not clear whether the mechanics of transfer and delivery and the "as of" dates for voting of Piper stock at a forthcoming meeting were such as to truly vest in Chris-Craft voting power for its 5% plus holding in Piper at the time. Even if it did have that power, the record before this Court is convincing that Chris-Craft, did not then or thereafter, exercise any controlling influence in Piper. Section 17(a) was designed to protect an investment company in its transactions with affiliates. In view of the price received by the Technology Fund ($65 per share as against the then market in the low fifties) and of subsequent events, it is difficult to discern any harm to the Fund in its sale of Piper stock to Chris-Craft. Bangor Punta is, under the circumstances, well beyond the pale of protection fairly intended by Section 17(a) of the Investment Company Act.

Bangor Punta's charges, compiled by able and diligent counsel, are an illuminating catalogue of pitfalls in the path of a contender for control of an unwilling target, competing with a well-financed adversary. However, the diligence is misplaced. The alleged breaches must not only be supported by credible evidence but must, importantly, be causally linked to damages. The complaint falls short on both scores.

The complaint is dismissed for failure to sustain with credible evidence, the burden of proof cast upon the plaintiff.

The foregoing shall constitute the findings and conclusions required by F. R. Civ. P. 52(a).

SO ORDERED.

ORIGINAL SIGNED
MILTON POLLACK

December 10, 1971

U. S. District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BANGOR PUNTA CORPORATION,

Defendant.

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70 CIV. 3940(MP)

#37866

FINDINGS AND OPINION

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
AUG 25 9 27 AM '71

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POLLACK, District Judge.

POLLACK, District Judge.

This is one of a series of cases in this Court arising out of a contest between Bangor Punta Corporation ("Bangor Punta") and Chris-Craft Corporation for control of Piper Aircraft Company ("Piper") -- a struggle in which Bangor Punta emerged, in September, 1969, with control of Piper.[1/]

Here the Securities and Exchange Commission ("Commission") asks the Court to enjoin Bangor Punta from violating the Securities Act of 1933 and the Securities Exchange Act of 1934 and to order Bangor Punta to make an offer of rescission to holders of Piper stock who exchanged their shares for securities of Bangor Punta, pursuant to an exchange offer of July, 1969.

The Commission charges that Bangor Punta's registration statement and prospectus dated July 18, 1969 pertaining to the Piper exchange offer were materially deficient in omitting to disclose an alleged decision to sell Bangor

1/ In Chris-Craft Corporation v. Bangor Punta Corporation 69 Civ.2227) Chris-Craft sues for damages alleging that Bangor Punta's victory was due to violations of the securities laws. Piper and Bangor Punta have cross-complained. (69Civ.2354 and 69 Civ.2227)

Punta's 98.7% stock interest in the Bangor and Aroostook Railroad ("BAR") at a price far below its carrying value on Bangor Punta's books and financial statements.[2/] The Commission further charges that Bangor Punta intentionally deferred a closing of that sale in order to avoid making and exposing the necessary write-downs until the exchange offer was completed.

Bangor Punta denies that the sale had been decided on in the June to August period that year or that there was then a reasonable probability of a sale. It contends that it was not required to make any reference in the prospectus of July 18, 1969 to the sale or to any steps leading to sale.[3/]

2/ As noted infra the sale of BAR stock took place October 2, 1969 and was for $5 million in cash, a figure some $13.5 million below the carrying value of BAR on Bangor Punta's financial statements.

3/ Bangor Punta has alleged affirmatively that the administrative staff of the Commission, to overcome its own errors and shortcomings, has engaged in a course of conduct, the intended result of which has been to interfere on behalf of and to favor Chris Craft Corporation in its struggle with Bangor Punta for control of Piper, a struggle which has been going on since May, 1969. No proof was adduced to support this contention.

The evidence adduced upon trial established the following facts.

On or about May 29, 1969 Bangor Punta filed with the Commission a registration statement and prospectus for an offering of its securities to holders of Piper common stock in exchange for their shares of Piper. The registration statement became effective on July 18, 1969 and the prospectus was sent thereafter to all Piper shareholders. On this offering, Bangor Punta obtained 111,628 shares of Piper Aircraft or about 7% of the 1,644,790 shares of Piper Aircraft common stock outstanding.

There is no information in the prospectus suggesting consideration or pendency of a sale in June, July or August, 1959. Bangor Punta did sell its stock in BAR to Amoskeag Corporation ("Amoskeag") on October 2, 1969 at a price of $5 million in cash plus certain contingent payments later described.

The historic cost of BAR's assets, less depreciation and other accounting adjustments and less liabilities was about $29.8 million. However, the financial statements

in the prospectus carry Bangor Punta's interest at $18.4 million, a figure which reflects an appraised value of the BAR shares as of September, 1965. The history of this figure is as follows:

Until 1961, BAR was an independent company. It then became a subsidiary of The Bangor and Aroostook Corporation (the "Corporation") which had been formed as a holding company. During 1960 and 1961 the Corporation offered its securities to BAR shareholders in exchange for their BAR shares and acquired more than 98% of BAR's outstanding shares. Based on the market price of BAR shares on the New York Stock Exchange before they were delisted in 1961, the Corporation's interest was worth $8.1 million and the Corporation carried the BAR interest at this figure in its financial statements.

In 1964, the Corporation combined with Bangor Punta (a wholly-owned subsidiary of Punta Alegre Sugar Corporation). Although Bangor Punta could have shown its equity in the net assets of the BAR at $29.8 million, it elected to carry forward the figure appearing on the books of the Corporation, viz., $8.1 million. It is claimed that this

was done because of a strong possibility that BAR was to be disposed of promptly. By September, 1965 that possibility had evaporated. But, instead of restating the carrying value of BAR at the amount of Bangor Punta's equity interest in BAR on a historical cost basis (which would have resulted in a carrying figure of $29.8 million) or at its or its predecessor's cost, Bangor Punta obtained an appraisal from investment banking houses with knowledge of the railroad industry. Based on their recommendation as to approximate fair market value Bangor Punta restated the BAR holding at $18.4 million -- approximately $10 million less than its equity in the underlying net asset value of the railroad on an historical cost basis and $10 million more than the former carrying figure. The difference between the former carrying figure of $8.1 million and the new appraised value of $18.4 million was credited directly to Bangor Punta'a earned surplus, by-passing the profit and loss account. This treatment had been the subject of inquiry by the Commission in connection with a prior registration statement and, after explanations were made, the Commission dropped the matter.

Except for minor accounting adjustments the $18.4 million carrying value of BAR established in 1965 remained unchanged and was reflected in the 1969 registration.

Bangor Punta's management had, for some time, sought a means of separating out BAR in a way which would permit its continued operation as a railroad. Discussions to that end were held within Bangor Punta in 1967 and 1968 and continued into 1969. Several methods were speculated on: viz., the creation of a New England Railroad System by combining the BAR with the Maine Central and Boston and Maine Railroads; an acquisition of the Delaware and Hudson Corporation to combine its railroad with the BAR; a spin off of BAR or a rights offering to the Bangor Punta stockholders. Prior to April of 1969 there seemed to be no prospect of a buyer for the railroad.

On April 1, 1969 Bangor Punta appointed a committee to study the possible divestiture of BAR. The committee consisted of Curtis M. Hutchins, a director and member of the Executive Committee, Gordon Robertson, co-Chairman of the Board and Chairman of the Executive Committee, Robert G. Stone and George H. Siel, Directors of the

railroad. Messrs. Hutchins and Robertson were both past presidents of the railroad. This was a highly knowledgeable group on matters pertaining to the railroad and its problems.

Some weeks after the Committee was appointed Amoskeag Company through its president, Frederic C. Dumaine, made an offer to C. M. Hutchins for the railroad of $5 million in cash. Dumaine had long and active experience in the railroad business as an operator. Amoskeag was a registered investment company with investments in the Maine Central Railroad Company among other enterprises. Dumaine's price was merely the amount of the savings in operating expenses which he estimated could be effected if the Maine Central and BAR were combined.

Hutchins told Dumaine -- in response to his query -- that Bangor Punta might dispose of its interest in the railroad if the price was right. To Dumaine's offer of $5 million -- for either the assets or the stock[4/] Hutchins

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4/ Dumaine's offer soon narrowed to one for the stock only and remained such through the negotiations.

responded that this was exceedingly low but that he would convey it to the management. Essential details -- including the railroad's cash flow figures, its balance sheet and a five year forecast, both cash and profit and loss -- were furnished to Dumaine at a second meeting with Hutchins. Dumaine reaffirmed his $5 million offer as his highest price. Hutchins explained that he had no authority except to explore possibilities of divestiture of the railroad; he had no power of decision.

Hutchins and the Committee members with whom he conferred concluded that sale of BAR stock to Amoskeag at the proferred price of $5 million was the "best course for Bangor Punta to pursue."

The company's independent auditors were asked about the accounting treatment which would be afforded a sale of the railroad for $5 million. On May 20, 1969 they reported that such a sale would be treated on the financial statements of Bangor Punta as an extraordinary loss of about $13.5 million.

On May 21, 1969 at a meeting of Bangor Punta's

Board of Directors, Hutchins, speaking for all the members of his Committee, stated that there were three possibilities for the future of BAR. Bangor Punta might (1) keep the railroad as is, (2) continue to seek to merge it with another railroad, or (3) sell BAR at the best possible price. He discussed each of these possibilities. In respect of the third possibility, he stated that the only person he knew who might be interested in a purchase was Dumaine, of Amoskeag. He reported that preliminary discussions with Dumaine indicated that he might be willing to pay $5 million in cash, securities or some combination of both.

Hutchins told the Board that his Committee unanimously recommended sale at the $5 million price. He reported that over the next five years a heavy infusion of capital in the order of $5 million would be needed to break even from operations. He gave very little hope for the possibility of a merger except conceivably with the Boston and Maine Railroad, and noted that this would produce securities rather than cash for Bangor Punta. This proposal of sale

was a surprise to the Board and met with the objection that the Board had insufficient information to make an intelligent decision since a great deal of accounting, tax and legal work had to be done as a preliminary matter to put the offer in proper focus.

In the course of the meeting, counter-suggestions as to price to be sought were broached by the Chairman of the Board, Nicholas M. Salgo.

Following discussion, it was the consensus of the Board that Hutchins should attempt to negotiate for a sale, at book value, of 51% of the stock of BAR and sale of the balance at a higher price with a total consideration to approximate $7 million. Hutchins was separately authorized to negotiate a sale of 100% of the BAR stock, subject to an investigation of the tax and accounting ramifications of such a transaction and subject to the approval of the Board of Directors or of the Executive Committee of the Board of Directors.

Dumaine, informed by Hutchins of the Board's counter-suggestions, would not change his offer. Dumaine and

Hutchins then drafted an unsigned letter setting forth a proposed arrangement of sale which Hutchins was to present to the Board. The draft, reciting that Hutchins was authorized only to explore the situation tentatively and that any "understanding" was subject to approval by the Board of Directors,[5/] stated that Hutchins and Dumaine had agreed on the sale to Amoskeag of all the BAR stock owned by Bangor Punta for $5 million plus some additions, subject to ICC approval.

Shortly thereafter, on June 3, 1969, following Hutchins' report to a key management group of Bangor Punta, it was decided to table the entire matter until the tax impact upon Bangor Punta of a sale of assets, as compared with some other disposition of the interest, could be studied and ascertained.[6/] Nothing indicated that there

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5/ Hutchins explicitly informed Dumaine that time was needed for accountants and tax personnel of Bangor Punta to review the tax effects of any deal and the evidence unquestionably confirms Hutchins' limited exploratory role.

6/ The study would require considerable time since it involved going to the Interstate Commerce Commission, sending representatives to Maine and going back over some 70 years of financial history and records and books of the BAR -- a time consuming and complex project.

was any especial urgency to give the matter earlier consideration. While the divestiture of this asset was a matter of significant interest to Bangor Punta, time was not made of the essence, by either Bangor Punta or Amoskeag.

Two weeks later, on June 16th, Hutchins met with Dumaine and apprised him of the management's decision not to approve or accept the unsigned draft letter. He told him that Bangor Punta lawyers and accountants had no time available then to make the investigations and reports deemed essential by the Board; that they were busy with a variety of other matters, including a pending SEC registration statement (the Piper exchange offer); and that it might be two months before they could get to the investigation of the factors material to Bangor Punta's consideration of a sale.

Bangor Punta's general exchange offer for the common stock of Piper Aircraft expired at 5 P.M. on July 29, 1969 and was approved by Bangor Punta's shareholders on August 7, 1969. On August 8, 1969, Bangor Punta commenced distributing its securities to Piper shareholders who had accepted

the exchange offer. The final prospectus for the offer stated:

> Until August 27, 1969, all dealers effecting transactions in the registered securities, whether or not participating in this distribution, may be required to deliver a Prospectus.

In the latter part of August, 1969, with the exchange program well nigh completed, Hutchins approached the general counsel of Bangor Punta with the suggestion that the required studies in respect to a sale of BAR go forward. Following instructions from the president, counsel began to gather the information which the Board of Directors was seeking.7/

On September 9, 1969, Bangor Punta's Board of Directors continued their discussions regarding the sale of BAR, which according to the minutes "has been under the consideration by the Board of Directors for a considerable period of time". Various proposals concerning the sale of the railroad were discussed, including an asset sale, a combination of a partial sale of th assets and a leasing arrangement of the remaining assets, and the sale of the stock of the railroad.

7/ The president was, however, careful to caution counsel not to allow the inquiry to interfere with any pressing current matters.

The Directors voted at that meeting to authorize Hutchins to consummate the sale of either the assets or stock of BAR to Amoskeag or to any other buyer for a consideration of $5 million or more in cash and such other additional consideration and benefits as were in his judgment obtainable and the Board authorized the execution of documents and the taking of all other action necessary to consummate a sale in accordance with the terms and conditions so to be negotiated.

Six days later, on September 15, Hutchins wrote to Dumaine that Bangor Punta had not yet reached a decision as to whether it would be most advantageous to dispose of its interest in the BAR through a sale of the stock ownership or in the form of an assets sale. Hutchins proposed to Dumaine that an agreement be worked out which would allow Bangor Punta, at its option, to sell either the BAR stock or assets.

On October 2, Hutchins and Robertson met with Dumaine in Boston. Dumaine refused to change his position in respect of an assets transaction. Thereupon, a contract for the sale of the stock of BAR to Amoskeag was prepared

and signed and the closing followed immediately thereafter.

The agreement of sale called for payment of $5 million in cash and other consideration. It was agreed that, if within three years BAR should transfer all of its assets except in a transaction in which neither gain nor loss is recognized for federal income taxes, Amoskeag would pay Bangor Punta an additional $1.5 million within 30 days after such transfer sale or other disposition.[8/] And, subject to specified conditions, Amoskeag agreed that it would also pay the net profits received by BAR within the next five years from sale of all or any part of its property at Sears Island, Maine.

The public announcement of the BAR sale on October 3, 1969 expressly stated that it would result in a non-recurring book loss of approximately $13 million with no tax benefit to the company and that part of the $5 million to be received in cash for the stock would be subject to capital gains taxes.

8/ The purpose of this provision is not entirely clear. It may have been intended to act as a deterrent to Amoskeag to consider any course but continuance of operation of the road.

Major Factual Contentions and Conclusions

It is contended by the Commission -- and Dumaine gave testimony supporting the notion -- that, at some undefined time during June, July or August, Bangor Punta had decided upon the sale to Amoskeag but decided to defer it to avoid disclosure in the pending registration statement and prospectus. These contentions, as well as Dumaine's testimony on the subject, lack support both in the credible evidence and in the probabilities. Indeed the evidence which the Court accepts as worthy of belief unequivocally negates any such purpose or plan.

The Commission's reliance on Dumaine's testimony is misplaced and the inferences which it has sought to draw that a sale was determined upon and deliberately deferred to avoid disclosure, are not accepted. 9/

9/ From observation during the trial the Court concludes that both Dumaine and Hutchins who negotiated and desired the sale, believed what they wished to believe, that their personal agreement concluded all but the formalities.

The Bangor Punta Board's behavior was consistent with the dictates of prudence. It insisted on consideration and study of alternatives. It accepted the sale only after being convinced that no viable alternatives existed. If there was a conscious tactical motive in delay, the most believable one is that the Board hoped to let Dumaine (and indeed Hutchins, whose personal commitment to the sale was obvious) simmer long enough to come up with something better. Indeed, even after the Board meeting of September 9, information was being supplied to the Board and, on September 29, some of the Board members attempted to block a sale of stock and bring about a sale of assets. Their reasons were weighty -- for a sale of assets might permit the reflection of a tax loss as high as $17.7 million, with some $9 million of cash flow addition for Bangor Punta -- as distinguished for the taxability of proceeds from sale of stock.

Thus, while the Court finds that there was an intention to sell, failing other alternatives and upon the best available tax and accounting bases, the Court does not find that Bangor Punta consciously concealed, deferred or

refrained from going forward with Dumaine's offer in order to circumvent disclosure in a pending registration statement.

Requirements of Disclosure

Bangor Punta could not in its registration statement and prospectus for the exchange offer omit "to state [any] material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading." Section 17(a) of the Securities Act of 1933, 15 U.S.C. 77q(a); Section 10(b) of the Securities Act of 1934, 15 U.S.C. 78j(b), and Rule 10b-5, 17 CFR 240.10b-5.

Bangor Punta's registration statement became effective on July 18, 1969. It "spoke" as of that date. The duty of dealers to use prospectuses continued until August 27, 1969.[10/] The Commission insists that as of these dates

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10/ The antifraud provisions of the Securities Act (§17(a)) and of the Exchange Act (§10(b) and Rule 10b-5) require the prospectus to reflect any post-effective changes necessary to keep the prospectus from being misleading in any material respect. This is sometimes handled mechanically by putting a sticker on the prospectus or supplementing it otherwise. The procedure to be used is set forth in 17 CFR 230.424(c).

Bangor Punta intended to sell and there was a reasonable probability that it would sell BAR at a substantial loss. Its failure to reflect this state of affairs is claimed to constitute the violations charged.

The Court has found that as of these dates Bangor Punta had not reached a decision to sell. The Commission's charge that the sale was a reasonable probability is made from the vantage point of hindsight. In the total perspective of events preceding the sale -- including the last-minute attempts to convert it into a sale of assets -- the Court cannot find that the sale was a reasonable probability at the time and to the people involved. Cf. James Blackstone Mem. Library Assn. v. Gulf, Mobile and Ohio R. Co., 264 F.2d 445 (7th Cir.), cert. denied, 361 U.S. 815 (1959). However, this does not necessarily mean that Bangor Punta met the obligation imposed upon it to make a requisite disclosure under the circumstances of this case. For the circumstances do indicate a sufficiently serious consideration of the possibility of sale at a figure some $13 million below the then carrying value of the BAR stock on Bangor Punta'a books so as to force the

conclusion that the Bangor Punta directors could not, at the time, have believed that the $18.4 million figure (based on an appraisal of 1965 fair market value) any longer represented a responsible appraisal of market value of the BAR holding.

In this respect, however, the Commission is claiming more than it needs to. The essential question is whether, despite the non-existence of intent or of reasonable probability, the circumstances surrounding the sale were such as to indicate that the $18.4 million carrying figure of the BAR holding was obsolete to the point of being misleading. The Court finds that it was -- absent full disclosure of the factors affecting the ultimate decision to sell the BAR interest at a figure of $5 million -- or even $7 million -- and regardless of whether the sale was to be of stock or of assets.

The Court is aware of no principle of accounting or of fair disclosure which would justify a failure to up-date a constructed carrying figure which may have reflected approximate fair value in 1965 but which was almost four times the offer of a willing buyer (and the only willing

buyer) in 1969 -- an offer which the Board, despite its efforts in good faith to find alternatives -- was constrained ultimately to accept. Consistency of fair disclosure required exposure of circumstances which so clearly rendered obsolete an appraisal made four years earlier.

I find that Bangor Punta did not intentionally or purposefully mislead Piper Aircraft stockholders or the public or investors by the omission to make disclosure of the sale under consideration nor did Bangor Punta or its directors intend to gain an advantage over Chris Craft by the nondisclosure in the contest being waged for control of Piper. There was no purposeful connection between the nondisclosure and the contest for control. In other words, the nondisclosure was not prompted by an improper purpose. However, absence of bad faith does not excuse the failure to state facts necessary to make the facts stated not misleading.

The explanatory footnote which did appear on the 1969 balance sheet was given so that anybody looking at the financial statements would not be confused as to why the full equity of the railroad was not picked up by

Bangor Punta as the carrying value of its investment. By the same token, the 1965 constructed carrying value should not have been used when it was known to substantially exceed the only bid that could be generated from a purchaser capable and willing to buy and operate the asset.

Bearing on Exchanging Piper Holder

The standard of materiality to be applied here is whether a reasonable stockholder of Piper might have hesitated to make an exchange for Bangor Punta securities with such a large loss figure emerging -- at least until sufficiently explained and put in proper perspective, in terms understandable by a reasonable investor.

At the end of fiscal 1968, Bangor Punta had retained earnings of $37.9 million. A sale of the stock at $5 million would result in a book loss equivalent to 36.5% of such retained earnings.

At the end of fiscal 1968, the shareholders' book equity in Bangor Punta was $113.5 million and a sale of the BAR at $5 million would result in a loss of 12% of the shareholders' book equity.

Bangor Punta had reported profits for each of the five years ending with that for September 30, 1968. A sale such as was being investigated would involve the loss ($4.32 per share) which would have far exceeded the company's net income for any of the five prior years.

The Court concludes that the registration statement and prospectus of Bangor Punta relating to the Piper exchange offer was misleading in its failure to disclose the circumstances surrounding the negotiations for sale of the PAR interest. In so holding especial note is taken of the unique "valuation" nature of the $18.4 million figure at which the PAR interest was carried on Bangor Punta's books. The present conclusion is not necessarily to be taken as applicable in cases where book carrying figures are in accordance with principles of conventional transactional accounting or where circumstances might otherwise be different.

Relief to be Granted

The Commission has requested an order requiring Bangor Punta to offer rescission to shareholders who accepted the Bangor Punta exchange offer and an order

enjoining Bangor Punta from further violations of the securities laws. The Court grants the first and denies the second of these requests.

Bangor Punta claims that such an offer of rescission would be an empty exercise since the Bangor Punta securities received by the Piper shareholders have a market value far in excess of the Piper shares given up by them. See Electronic Specialty Co. v. International Controls Corp., 409 F.2d 937, 947 (2d Cir. 1969). The decision whether to rescind is nonetheless one to be made by those who took the exchange.

Accordingly, Bangor Punta will be required to make an offer of rescission and the parties are directed to submit an appropriate decree for the Court's consideration to carry out such an offer. Such offer should allow Bangor Punta full scope to point out any factual considerations bearing on a decision to accept or by-pass rescission as may be accurate and appropriate under the circumstances.

Bangor Punta claims that an injunction is unnecessary and inappropriate since there is no evidence of its

bad faith; that it acted on advice of counsel and of its accountants; and that this was an isolated transaction involving a single unintentional violation. Securities and Exchange Commission v. Torr, 87 F.2d 446 (2d Cir. 1937). Moreover, Bangor Punta contends that its past conduct does not indicate a reasonable likelihood of future violations. Securities and Exchange Commission v. Franklin Atlas Corp., 171 F. Supp. 711 (S.D.N.Y. 1959)(Dawson, J.); Securities and Exchange Commission v. Texas Gulf Sulphur Co., ___ F.2d ___ (2d Cir. June 10, 1971).

The Commission insists that Bangor Punta has demonstrated a propensity for violating the securities law because the company allegedly violated a consent decree entered on May 26, 1969 by the United States District Court for the District of Columbia in the Commission's suit there against Bangor Punta, by filing a registration statement which omitted to disclose the facts discussed in this opinion. That suit centered on a Bangor-Punta-Piper release of May 8, 1969. Bangor Punta consented to the decree and the Commission's complaint here avers that the company's demonstrated propensity for violating the

securities laws is not at all based upon the issuance of that release (which is a subject of controversy in an action by Chris Craft against Bangor Punta and others). Chris-Craft Industries, Inc. v. Bangor Punta Corp., 426 F.2d 569, 573-576 (2d Cir. 1970) and ibid 69 Civ. 2354 now before this Court for decision.

Under all the facts and circumstances in this case, the Commission has failed to carry its burden to establish, with persuasive evidence, that Bangor Punta, its officers, directors and employees have a propensity or natural inclination to violate the securities law. Securities and Exchange Commission v. Texas Gulf Sulphur Co., ___ F.2d ___ (2d Cir. June 10, 1971). Accordingly, the requested injunction is denied.

The foregoing shall constitute the findings and conclusions required by F. R. Civ. P. 52(a).

Submit decree in accordance with these findings on 15 days notice.

SO ORDERED.

August 25, 1971

Metro Goldwyn Pokesack
U.S.District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES and EXCHANGE COMMISSION,

Plaintiff,

v.

BANGOR PUNTA CORPORATION,

Defendant.

3940(MP)

MEMORANDUM

Pollack, District Judge.

Bangor Punta requested the Court to reopen the record and to make additional findings of fact. Subsequent to receiving SEC's opposition to the request, Bangor Punta withdrew the application to reopen the record as unnecessary and has substituted a request that the Court issue a statement in disposing of this matter that generally accepted accounting principles were not litigated herein. The request and opposing paper are being filed herewith.

It is beyond the scope and intent of the opinion of August 25, 1971 to consider or decide what constitute accepted principles of accounting in the abstract. The opinion deals solely with the requirements of a prospectus used on an exchange of securities and what is to be considered misleading in connection therewith. Any differences between accepted principles of accounting and fair disclosure in a prospectus must be resolved in favor of the disclosure requirements of a prospectus which essentially are a management not an accountant's responsibility.

The application to reopen the record and for additional findings is accordingly denied.

SO ORDERED.

ORIGINAL SIGNED
MILTON [illegible]

September 17, 1971

U.S. District Judge

91A-3

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

S. DISTRICT CO
FILED
NOV 17 1971
S. D. OF N. Y.

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BANGOR PUNTA CORPORATION,

Defendant.

70 CIV. 3940(MP)

MEMORANDUM ON SETTLEMENT OF JUDGMENT

POLLACK, District Judge.

A provision has been inserted in the decree submitted for settlement requiring that any rescinding holder should account on the offer of rescission for any profits realized from interim sale of all or any part of the original stock obtained on the exchange in August, 1969.

The purpose of restitution is to put the injured party in as good (not a superior) position as that occupied by him before the contract or sale or exchange was made.

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If a rescinding party has made profitable use of the subject of the rescission, or has received fruits such as dividends or interest or other benefits thereon, these profits, fruits, other benefits and their values must be accounted for by the rescinding party to effect a return to the status quo ante. A party will not be permitted to retain the benefits or fruits of a contract and at the same time repudiate it. It is inappropriate for a rescinding party to in effect affirm his ownership in part and to disaffirm the entire transaction.

> It is a prerequisite to restitution that a party disgorge to the other party any proceeds the former has received upon disposition of the original property. Marr v. Tumulty, 256 N.Y. 15, 175 N.E. 356 (1931)
> Mott v. Tri-Continental Financial Corp., 330 F.2d 468, 470 (2d Cir. 1964)

Ordinarily, if one no longer owns the original shares acquired in a rescindable transaction, he is limited to an action for damages and may not be accorded rescission. Mott v. Tri-Continental Financial Corp., cit. supra, at 470. Equity may waive this requirement in a proper case and may permit the rescinding party to account to the other party for the value of any part sold. Williston, Contracts,

§1463, p. 161 (3rd ed., Vol. 12, 1970). Equity may also permit the restitution to consist of substitute shares acquired for the purpose of rescission. In that event, everything of value including the profit, if any, realized from a prior sale or disposition of the original stock and the subsequent reacquisition of like shares must be accounted for to the other party as a prerequisite to rescission, in the same way as other fruits of the interim ownership must be restored. See, Corbin on Contracts §§1114-1115, Volume 5 (1964 Ed.); 17 Am. Juris. 2d §512, p. 996 (2d Ed. 1964); Marr v. Tumulty, 256 N.Y. 15, 175 N.E. 356 (1931); Ufland & Co. v. McMahon, 215 App. Div. 267, 269 (4th Dept. 1926); Commissioner of Banks v. Chase Securities Corp., 298 Mass. 285, N.E. 2d 472, 499, 500 (1937); E.T.C. Corp. v. Title Guar. & Trust Co., 271 N.Y. 124, 2 N.E. 2d 284 (1936).

November 17, 1971

Milton Pollack
U. S. District Judge.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
FILED
NOV 17 1971
S. D. OF N. Y.

SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	FINAL DECREE
-against-	:	
BANGOR PUNTA CORPORATION,	:	70 Civ. 3940:MP
Defendant.	:	

Upon all of the proceedings heretofore had herein, and upon all of the documents heretofore filed herein, and upon the Findings and Opinion of the Court dated August 25, 1971;

Now upon hearing Bangor Punta Corporation by Messrs. Webster Sheffield Fleischmann Hitchcock & Brookfield, in support of this Final Decree, and the Securities and Exchange Commission by Robert E. Kushner, Esq. in opposition thereto, it is hereby

ORDERED that judgment on the Complaint herein is entered in favor of the plaintiff, Securities and Exchange Commission ("Commission"); and it is further

ORDERED that the request of the Commission for a permanent injunction enjoining the defendant Bangor Punta Corporation ("Bangor Punta") from violating certain provisions of the securities laws is denied; and it is further

NOV 17 1971

ORDERED that Bangor Punta offer to all those former owners of shares of common stock of Piper Aircraft Corporation ("Piper")

who tendered their shares of Piper common stock to Bangor Punta pursuant to the General Exchange Offer made by Bangor Punta under the Registration Statement and Prospectus (Registration No. 2-33263) dated July 18, 1969 ("General Exchange Offer"), and received Bangor Punta securities in exchange therefor, the opportunity to rescind the transaction and to receive back from Bangor Punta their shares of Piper common stock upon the general terms and conditions hereinafter set forth; and it is further

ORDERED that the general terms and conditions of the offer of rescission to be made by Bangor Punta hereunder are as follows:

1. The offer of rescission shall be made to those former shareholders of Piper who tendered their shares of Piper common stock to Bangor Punta pursuant to the General Exchange Offer, or to their heirs, executors, administrators, or legal representatives ("Piper shareholders"). The right to obtain rescission hereunder is assignable.

2. The offer of rescission will be made by means of a registration statement filed with the Commission pursuant to Section 6 of the Securities Act of 1933, 15 U.S.C. 77f, and setting forth, inter alia, the factual considerations bearing on a decision to accept or by-pass rescission as may be accurate and appropriate under the circumstances.

3. In order to accept the offer for rescission, a Piper shareholder must tender back to Bangor Punta, through Irving Trust Company ("Exchange Agent"), for each share of Piper common stock with respect to which such Piper shareholder has elected to rescind

the following securities: (a) 1.2 shares of Bangor Punta common stock par value $1; (b) Bangor Punta Warrants - Series C, to purchase 3.5 shares of Bangor Punta common stock par value $1; and (c) $31 in principal amount of the 8-1/4% Convertible Subordinated Debenture due 1994 of Bangor Punta.

4. In addition to the Bangor Punta securities described in "3" above, a Piper shareholder must also tender back to Bangor Punta through the Exchange Agent for each share of Piper common stock with respect to which such Piper shareholder has elected to rescind, a cash payment in an amount determined as follows:

(a) If the Piper shareholder has not sold any of the Bangor Punta securities received on the General Exchange Offer, a cash payment in an amount equal to: (i) all dividends paid or due and payable from August 8, 1969 on the 1.2 shares of common stock par value $1 of Bangor Punta tendered; and (ii) all interest payments paid, or due and payable from July 1, 1969 on the $31 principal amount of the 8-1/4% Convertible Subordinated Debenture tendered, to the date such Piper shareholder has accepted the offer of rescission; or

(b) If the Piper shareholder has sold any portion or all of the Bangor Punta securities received on the General Exchange Offer and repurchased such Bangor Punta securities sold, a cash payment in an amount equal to: (i) all dividends paid and received by such Piper shareholders or due and payable from August 8, 1969 on the 1.2 shares of common stock par value $1 of Bangor Punta; (ii) all interest payments paid and received by such Piper shareholder or due and payable from July 1, 1969 on the $31 principal amount of the 8-1/4% Convertible Subordinated Debenture; and (iii) the gross proceeds realized by such Piper

shareholder on the Bangor Punta securities sold, less both the necessary expenses of such sale and the actual cost to such Piper shareholder of repurchasing the Bangor Punta securities tendered.

5. Any assignee of a Piper shareholder entitled to accept the offer of rescission must tender to Bangor Punta through the Exchange Agent for each share of Piper common stock with respect to which such assignee has elected to rescind the following: (i) the Bangor Punta securities described in "3" above; (ii) a cash payment in an amount equal to the amount the assignor of such assignee would be required to tender under "4" above if such assignor had made the tender; and (iii) satisfactory documentary evidence of the assignment.

6. Promptly after the receipt by the Exchange Agent of notice of acceptance by a Piper shareholder or his assignee of the offer of rescission together with the Bangor Punta securities and cash payment referred to in "4" or "5" above, Bangor Punta, through the Exchange Agent, will cause to be transferred to such Piper shareholder or his assignee the number of shares of Piper common stock for which such Piper shareholder or his assignee has duly elected to rescind together with a cash payment for all dividends paid or due and payable on such shares of Piper common stock from August 8, 1969, until the date of receipt of notice of acceptance.

7. The Bangor Punta securities tendered by a Piper shareholder or his assignee must be duly endorsed to Bangor Punta.

8. The offer of rescission shall remain open for acceptance for a period of not less than thirty (30) days after the written offer of rescission is mailed to the last known address of

the Piper shareholders who accepted the General Exchange Offer.

9. In the event a Piper shareholder or his assignee accepting the offer of rescission is required to tender:

(a) a fractional interest of a share of Bangor Punta common stock, such Piper shareholder or his assignee shall tender in lieu thereof a cash payment based upon a valuation of Bangor Punta common stock ~~at $22.87 per share;~~ as of the date of the offer of rescission;

(b) a fractional interest of a Bangor Punta Warrant - Series C to purchase one share of Bangor Punta common stock, such Piper shareholder or his assignee shall tender in lieu thereof a cash payment based upon a valuation of Bangor Punta Warrants - Series C ~~[illegible] per Warrant~~ as of the date of the offer of rescission to purchase one share of Bangor Punta common stock;

(c) less than $100 principal amount of 8-1/4% Convertible Subordinated Debentures, such Piper shareholder or his assignee shall tender in lieu thereof a cash payment equivalent to the principal amount.

10. Promptly after the entry of this Decree, Bangor Punta shall cause to be mailed to each Piper shareholder at his last known address copies of this Court's Findings and Opinion dated August [illegible], 1971, and of this Final Decree together with a written statement prepared by the Commission in the form annexed hereto as Exhibit A.

11. Bangor Punta will use its best efforts to effect the offer of rescission as promptly as possible after the entry of this Final Decree.

12. Bangor Punta shall promptly prepare a list of the names and last known addresses of all Piper shareholders who tendered their shares pursuant to the General Exchange Offer, and shall retain said list subject to further direction of the Court concerning its disclosure to other persons; and it is further

ORDERED that jurisdiction of this action is retained by this Court for the purpose of the carrying out of this Final Decree.

Milton Pollack
U.S.D.J.

November 17, 1971
New York, New York

JUDGMENT ENTERED 11/17/71

John Livingston
Clerk

STATEMENT OF SECURITIES AND EXCHANGE COMMISSION

EXHIBIT A

November 17, 1971

TO: CERTAIN FORMER SHAREHOLDERS OF PIPER AIRCRAFT CORPORATION

This statement is addressed to you as a former holder of the common stock of Piper Aircraft Corporation ("Piper") who exchanged shares of that stock for securities of Bangor Punta Corporation ("Bangor Punta") pursuant to a "General Exchange Offer" by Bangor Punta made under a prospectus dated July 18, 1969.

Enclosed are copies of the Opinion and Final Decree of the Honorable Milton Pollack, United States District Judge for the Southern District of New York, in an action entitled Securities and Exchange Commission v. Bangor Punta.

Under the terms of the Final Decree, Bangor Punta is required to make an offer of rescission to each person who accepted the "General Exchange Offer" on the terms and conditions as described in the enclosed order of Judge Pollack (see pages 2-5 thereof).

Your right to accept the offer of rescission is fully assignable.

The offer of rescission will be made at earliest in January 1972. At that time Bangor Punta will send you a prospectus containing additional information with respect to the offer of rescission and material setting forth the procedure to be followed by you if you choose to exercise your right of rescission. The offer of rescission will remain open for not less than the succeeding thirty (30) days.

In view of the fact that the offer of rescission will be made at a future time, current relative market prices may not give an accurate indication of the economic value, if any, of such offer to you. You may wish to assess the value, if any, of the offer at the time when you receive it.

In any event, this offer of rescission does not prejudice any other legal right which you may have with respect to this matter.

If you wish to notify Bangor Punta of a change in your address, you should do so by sending a letter to the exchange agent for the offer of rescission, Irving Trust Company, Corporate Trust Department, One Wall Street, New York, New York 10015. All other inquiries should be in writing and may be addressed either to John J. Martin, Esq., Assistant General Counsel, Bangor Punta Corporation, Greenwich, Connecticut 06830, or to James J. Sexton, Esq., Office of the General Counsel, Securities and Exchange Commission, Washington, D.C. 20549.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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CHRIS-CRAFT INDUSTRIES, INC.,

Plaintiff,

-against-

PIPER AIRCRAFT CORPORATION, CHARLES W. POOL, WALTER C. JAMOUNEAU, HOWARD PIPER, THOMAS F. PIPER, WILLIAM T. PIPER, JR., BANGOR PUNTA CORPORATION, NICHOLAS M. SALGO, DAVID W. WALLACE, HARRY S. BAKER, ROBERT L. CHAMBERS, JAMES S. GARVEY, WILLIAM E. HILL, CURTIS M. HUTCHINS, GEORGE S. JONES, FREDERICK H. KINGSBURY, JR., WALTER B. McKINNEY, W. GORDON ROBERTSON, GEORGE H. SEAL, ROBERT G. STONE, W. JEROME STROUT, JAMES G. TREMAINE, HARRY C. WOOD, THE FIRST BOSTON CORPORATION, PAUL L. MILLER and N. BAYARD,

Defendants.

- -x

SECOND AMENDED COMPLAINT

69 Civ. 2227:MP

Plaintiff, complaining of defendants, alleges on information and belief, except as to paragraphs 1, 3, 5, 9, 12, 17 through 19, 28, 29, 31, 33, 58, 59, and 63 through 66:

1. The jurisdiction of this Court is based upon 28 U.S.C. § 1331(a), Section 27 of the Securities Exchange Act of 1934, as amended (15 U.S.C. § 78aa), and Section 22 of the Securities Act of 1933, as amended (15 U.S.C. § 77v). This action is brought under Sections 9, 10, 14 and 16 of the Securities Act of 1934, as amended, Section 5 of the Securities Act of 1933, as amended, and under the rules promulgated with respect to each such Act (collectively referred to herein as the "securities laws").

2. The acts, or some of them, constituting the violations of law complained of took place within the Southern District of New York.

3. Plaintiff Chris-Craft Industries, Inc. ("Chris-Craft") is a Delaware corporation having its principal executive offices in the City, County and State of New York. Shares of Chris-Craft's common and preferred stock and convertible debentures are traded on the New York Stock Exchange ("NYSE").

4. (a) Defendant Piper Aircraft Corporation ("Piper") is a Pennsylvania corporation having its principal place of business in Lock Haven, Clinton County, Pennsylvania.

(b) The following defendants (collectively referred to herein as the "Management Directors") were directors of Piper and held the following positions with Piper until the date indicated, if any, of termination:

Director	Title	Termination
William T. Piper, Jr.	Chairman of the Board and President	Resigned as Chairman August 12, 1969
Thomas F. Piper	Vice President	Resigned as a Director August 12, 1969
Howard Piper	Executive Vice President	Resigned as a Director August 12, 1969
Charles W. Pool	Treasurer	Resigned as Director August 12, 1969 and as Treasurer November 6, 1969
Walter C. Jamouneau	Secretary	Resigned as Director and as Secretary August 12, 1969

(c) The Piper Board of Directors is presently constituted as follows:

Name	Other positions and offices with Piper	Principal occupation or employment
Nicholas M. Salgo	Chairman of the Board	Chairman of the Board Bangor Punta Corporation
David W. Wallace	Assistant Vice President	President and Chief Operating Officer, Bangor Punta Corporation
W. Gordon Robertson	None	General Trustee of Bangor Punta's Employee Benefit Program
Dudley C. Phillips	Assistant Vice President-Assistant Secretary	Vice President and General Counsel, Bangor Punta Corporation
W. T. Piper, Jr.	President	President Piper Aircraft Corporation
C. Leonard Gordon	None	Vice President and General Counsel Chris-Craft Industries, Inc.
Lawrence R. Barnett	None	Vice President Chris-Craft Industries, Inc.
James J. Rochlis	None	Executive Vice President Chris-Craft Industries, Inc.

5. Chris-Craft owns 697,495 shares of Piper common stock, constituting approximately 42% of Piper's issued and outstanding shares of stock.

6. (a) Defendant Bangor Punta Corporation ("Bangor Punta"), a Delaware corporation, is publicly held.

Shares of Bangor Punta's common and preferred stock are traded on the NYSE. Bangor Punta presently owns approximately 838,156 shares of Piper stock, constituting approximately 51% of Piper's issued and outstanding shares of stock. Bangor Punta has been exercising working control over the affairs and policies of Piper since August 1969.

(b) Defendant Nicholas M. Salgo is the Chairman of the Board and defendant David W. Wallace is the President and a director of Bangor Punta.

(c) Defendants Harry S. Baker, Robert L. Chambers, James S. Garvey, William E. Hill, Curtis M. Hutchins, George S. Jones, Frederick H. Kingsbury, Jr., Walter B. McKinney, W. Gordon Robertson, George H. Seal, Robert G. Stone, W. Jerome Strout, James G. Tremaine and Harry C. Wood were the other members of the Board of Directors of Bangor Punta in May 1969.

7. Defendant The First Boston Corporation ("First Boston") is an investment banking corporation doing business in the City, County and State of New York. Defendant Paul L. Miller is the President of First Boston and defendant N. Bayard is an officer, employee or agent thereof. First Boston, Miller and Bayard acted as the agents of the Management Directors, the Piper family and of Bangor Punta in bringing about the transactions complained of herein.

COUNT ONE

Background

8. Piper is a publicly held corporation engaged in the manufacture of light aircraft. The capital stock of Piper consists of 5,000,000 authorized shares of $1.00 par value common stock, of which approximately 1,644,790 shares are issued and outstanding. Piper's stock was listed on the NYSE from 1957 until delisted during 1969 and is now registered on the Philadelphia-Baltimore-Washington Stock Exchange ("PBWSE").

9. On January 23, 1969, Chris-Craft publicly announced (a) that it had acquired a stock interest in Piper, (b) that it was making an offer (the "Chris-Craft tender offer") to all Piper shareholders to purchase 300,000 shares of Piper stock at a price of $65 a share, and (c) that Chris-Craft proposed to take additional steps to acquire sufficient shares to obtain control of Piper. On the day preceding these announcements, the closing price of Piper on the NYSE was $52.50.

10. In willful violation of the securities laws, the Management Directors conspired among themselves and with others, including First Boston and Bangor Punta, to perpetuate themselves in control of Piper and to interfere with Chris-Craft's offers to purchase Piper stock in at least the following respects:

(a) making, in communications disseminated to Piper's shareholders, the investment community

and the public at large, untrue statements of material facts and omitting to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;

(b) engaging in acts, practices and courses of business, which have operated and are now operating as a fraud upon Chris-Craft, the other shareholders of Piper, the investment community and the public, and employing devices, schemes and artifices to defraud such persons;

(c) engaging in manipulative and deceptive contrivances and practices to manipulate downward the price at which shares of the stock of Chris-Craft traded on the NYSE, and to manipulate upward the price at which shares of Piper and Bangor Punta traded on the NYSE;

(d) illegally offering to sell securities of Piper and Bangor Punta, through the use of a prospectus and otherwise, when no registration statement was in effect as to such securities; and

(e) illegally purchasing securities of Piper which carried with them the right to purchase securities of Bangor Punta in which a distribution was then being made, at the times and in the manner set forth in Count Three herein.

One of the effects of such acts and courses of conduct was to mislead Chris-Craft and the public as to the true value of Piper stock.

11. In furtherance of said conspiracy, the defendants have engaged in the acts described below, among others, in which the mails, means and instrumentalities of interstate commerce, and the facilities of the NYSE have been used.

The Chris-Craft Tender Offer

12. On January 24, 1969, Chris-Craft made its tender offer to the shareholders of Piper for 300,000 or more shares of Piper stock for cash at $65 per share. For the purpose of interfering with Chris-Craft's tender offer and depriving Piper shareholders of the opportunity to evaluate the offer on its merits, the Management Directors sent, through the mails, letters to the shareholders of Piper, including shareholders in the Southern District of New York, which stated, among other things:

(a) by letter dated January 27, 1969: "Your Board of Directors has carefully studied this [Chris-Craft] offer and is convinced that it is inadequate and not in the best interests of Piper shareholders"; "Piper's stock has traded as high as $72.25 on the New York Stock Exchange within the past eight months"; and "Piper's sales increased more than 20% in fiscal 1968 over the prior year, and its earnings per share were approximately 29% higher";

(b) by letter dated January 28, 1969: "Your management firmly believes that this [Chris-Craft] offer is inadequate and not in the best interests of Piper shareholders."

13. The aforesaid letters were false and misleading, and known to be such by the Management Directors, in that they:

(a) concealed the fact that First Boston, Piper's investment banker, had advised Piper that the price of $65 a share was a fair price for a shareholder to receive for his Piper stock;

(b) concealed the fact that during the summer of 1968, when Piper stock had traded as high as $72.25 on the NYSE, the Management Directors regarded the price as so attractive that some of them sold their own Piper stock, and thereafter the stock had declined to as low as $50.875 a share;

(c) concealed the fact that the Management Directors controlled approximately 10% more of the outstanding stock of Piper than had been disclosed in filings with the Securities and Exchange Commission ("SEC");

(d) concealed the fact that the Management Directors had planned as early as August 1968 to oppose any attempts by outsiders to acquire control of Piper regardless of any benefits that might accrue to Piper and its shareholders and that no serious discussions or study was had of Chris-Craft's offer;

(e) failed to state that Piper's sales had dropped by over 10% in the first quarter of fiscal 1969 from sales in the first quarter of fiscal 1968, and that Piper's earnings had dropped by almost 30% compared to the equivalent quarter of the prior year, which facts were known to the

Management Directors prior to January 27, 1969 but not disclosed until January 29, 1969;

(f) concealed the fact that the Management Directors had discussed and expressed concern about the deteriorating financial condition, production and engineering capabilities of Piper, including the facts that (i) the market for single engine aircraft was deteriorating, (ii) Piper could not afford to develop new markets (iii) manufacturing at Lock Haven was in a confused state and unable to meet schedules, (iv) engineering schedules had not been met for years, (v) significant changes in Piper's management and systems were required before sales could be increased, and (vi) the morale of employees at Piper's main plant was at a low point and worsening;

(g) concealed the fact that one of Piper's more popular aircraft, designated as the PA-30 and known as the Twin Comanche, almost 2,000 of which were sold since 1964, had an unsatisfactory safety record which had caused and was continuing to cause materially sharp increases in the cost of insurance and would require an expensive retrofit program, in addition to other adverse consequences therefrom;

(h) concealed the fact that its efforts to design a plane, to be known as the Pocono, for the rapidly expanding commuter aircraft market were not successful, that the plane never had adequate power, and that there was a substantial prospect, which came to pass in late August 1969, that the project

would have to be abandoned, leaving idle a plant which had been constructed at great cost to manufacture the Pocono.

The Transaction With Grumman

14. In a further effort to interfere with Chris-Craft's tender offer, on January 29, 1969 the Management Directors caused Piper to announce through interstate news media and the mails (for dissemination to their shareholders and the public, including persons in the Southern District of New York) that Grumman Aircraft Engineering Corporation ("Grumman") had "agreed to purchase 300,000 shares of [Piper's] authorized but unissued common stock at $65 per share." Piper's announcement further stated:

> "The sales agreement is subject to various conditions, including that the shares be listed on the New York Stock Exchange, that there be no material adverse change in the business of Piper and that there be no change in control of Piper."

15. Piper's announcement of the Grumman transaction was false and misleading in that it failed to disclose, among other things, that:

(a) Grumman had the right, in its unilateral discretion, to sell back the stock to Piper over a seven month period (hereinafter the "option period") at a price of $65 per share, plus interest;

(b) during the option period, Piper was precluded under the agreement from using or commingling the funds for the 300,000 shares of Piper stock, while Grumman was free during the option period to hold and vote the Piper shares;

(c) because of the fact that the agreement amounted in effect to no more than an option, the Management Directors and First Boston knew that the 300,000 Piper shares to be issued to Grumman during the option period could not be listed on the NYSE, a necessary condition to the agreement;

(d) consummation of the agreement with Grumman would be in violation of Section 7 of the Clayton Act (15 U.S.C. § 18); and

(e) the Grumman transaction was designed to interfere with Chris-Craft's tender offer and to manipulate downward and depress the market price of Chris-Craft stock on the NYSE.

16. The agreement with Grumman, which was brought about by First Boston, Miller and Bayard, was illusory and one-sided. It was intended as, and operated as, a fraudulent scheme and artifice to interfere with Chris-Craft's tender offer, to manipulate the price of Chris-Craft stock downward and the price of Piper stock upward, and to make the shareholders of Piper less likely to sell their shares to Chris-Craft.

17. As a result of the foregoing announcements and conduct by the Management Directors, First Boston, Miller and Bayard, Chris-Craft was caused to believe that its investment in Piper stock was worth $65 per share, it acquired fewer shares of Piper stock under its tender offer than it would have acquired in the absence of such fraudulent conduct and the market price of Chris-Craft was artificially manipulated downward from the price of $51.50 a share at which it was trading when Chris-Craft first announced its interest in Piper.

18. After Chris-Craft's tender offer had terminated on February 3, 1969, Piper and Grumman announced that their agreement had been terminated.

Chris-Craft's Registration
Statement for its Exchange Offer

19. On February 27, 1969 Chris-Craft filed its registration statement and form of prospectus with the SEC in connection with its exchange offer to Piper's shareholders (the "Chris-Craft exchange offer") by which Chris-Craft proposed to offer to exchange certain of its own securities for 300,000 Piper shares, with the right to buy an additional 100,000 shares. Chris-Craft reserved the right to terminate its offer, among other reasons, upon any material increase in the aggregate number of outstanding shares of Piper stock or material change in the capitalization of Piper.

20. Since the consideration to be received by Piper's shareholders who delivered their shares to Chris-Craft consisted of securities of Chris-Craft, the Management Directors and First Boston knew that any decline in the price

of Chris-Craft's stock would adversely affect the offer, as would any increase in the number of Piper shares outstanding.

The U.S. Concrete and Southply Transactions

21. On March 22, 1969 while Chris-Craft's registration statement was under review at the SEC, the Management Directors, at the insistence of First Boston, caused Piper to enter into:

(a) an agreement with United States Concrete Piper Company ("U.S. Concrete") and Pittsburgh Coke & Chemical Company ("Pittsburgh Coke") whereby Piper would acquire all of the outstanding shares of their subsidiary, United States Concrete Pipe Company of Florida ("U.S. Concrete Florida") in exchange for 320,000 shares of authorized but unissued common stock of Piper; and

(b) an agreement with certain stockholders of Southply, Inc. ("Southply") under which Piper would acquire 99.466% of the outstanding shares of Southply in exchange for 149,199 shares of authorized but unissued stock of Piper.

22. The 149,199 shares which Piper agreed to issue for the stock of Southply had a market value, based on the last price on the NYSE, of over $10,600,000. Southply's net worth as of December 31, 1969 was minus $10,582 and it had sustained net losses in 1968 of $58,499 and in 1967 of

$529,671. The stock which Piper agreed to issue for Southply had a value of at least $10,000,000 in excess of the value of Southply.

23. The 320,000 shares of Piper stock which Piper agreed to issue for the acquisition of U.S. Concrete Florida had an aggregate value of approximately $22,800,000 based on the last price on the NYSE. In its annual financial statement, issued to stockholders on March 21, 1969, only one day before the agreement with Piper, Pittsburgh Coke represented that U.S. Concrete, including its subsidiary U.S. Concrete Florida, had a fair value, based on underlying net assets, of only $16,535,000 and that in an attempted disposition the price might well be less. In addition, eight private treble damage antitrust actions were pending against U.S. Concrete involving the very business which Piper agreed to buy. The stock which Piper agreed to issue for U.S. Concrete Florida had a value of at least $7,000,000 in excess of the value of U.S. Concrete Florida.

24. At the time they caused Piper to enter into the agreement for the acquisition of Southply and U.S. Concrete Florida, the Management Directors, First Boston, Miller and Bayard were aware of the provisions of Piper's Listing Agreement with the NYSE and of the applicable rules of the NYSE, by which it was necessary (a) for a listing application to be approved by the NYSE prior to the issuance of Piper stock to U.S. Concrete and to the shareholders of Southply, and (b) for the proposed issuance to be authorized by Piper's shareholders before any application would be approved by the NYSE.

25. The agreements for the purchase of Southply and U.S. Concrete Florida were fraudulently entered into for the purpose of interfering with Chris-Craft's exchange offer and were intended to have the effect of diluting Piper's stock so as to keep control of Piper in the Management Directors and make it impossible for the exchange offer to succeed. The agreements constituted a device and artifice to manipulate the price of Chris-Craft downward and to defraud Chris-Craft and other purchasers of Piper stock who relied upon Piper's Listing Agreement with the NYSE and the obligations of the Management Directors to adhere to the NYSE rules prohibiting such dilution of the shareholders' interest without their approval.

26. The Management Directors, First Boston, Miller and Bayard were well aware that the shareholders of Piper would not approve the issuance of the 469,199 shares of Piper stock for U.S. Concrete Florida and Southply, and that this transaction could not, therefore, be consummated under the NYSE rules and Piper's Listing Agreement.

27. Nevertheless, intent only on blocking Chris-Craft's exchange offer, the Management Directors, First Boston, Miller and Bayard on or about March 24, 1969, in knowing and willful violation of the NYSE rules and the Listing Agreement, caused Piper to issue the 469,199 shares of Piper stock in exchange for Southply and U.S. Concrete Florida without seeking or obtaining the approval of Piper's shareholders and without the approval of a listing application for such shares by the NYSE. When Bankers Trust Company, Piper's sole Registrar, refused to register the new issue of Piper stock and Manufacturers Hanover Trust Company, Piper's

sole Transfer Agent, refused to issue certificates of the stock, the Management Directors caused Piper to issue spurious certificates to U.S. Concrete and the Southply shareholders.

28. On March 31, 1969 Chris-Craft brought an action in the Supreme Court of the State of New York, County of New York, against Piper, the Management Directors, and others to enjoin or rescind the issuance of the aforesaid 469,199 shares of Piper, in which action a temporary restraining order was entered enjoining the further consummation of such transactions and preventing the issuance of Piper stock without prior NYSE approval.

29. On April 3, 1969, after the Management Directors refused to take any steps to rescind the issuance of said shares, the NYSE Board of Governors directed that trading in Piper's stock be suspended and that a delisting application be filed forthwith with the SEC, and announced that Piper had violated its Listing Agreement and the NYSE rules.

30. Such NYSE action was deliberately brought about by the Management Directors, with the assistance of First Boston, Miller and Bayard, for the purposes of (a) depriving Chris-Craft and the other shareholders of Piper of the benefits of NYSE listing, (b) discouraging Chris-Craft from proceeding with its exchange offer and causing the processing of the Chris-Craft exchange offer to be delayed by the SEC until the Southply and U.S. Concrete Florida transactions could be rescinded and Piper readmitted to trading on the NYSE, and (c) manipulating downward the price of Chris-Craft so that its exchange offer would be unsuccessful, or at least more costly.

31. On or about April 14, 1969 Piper rescinded its acquisition of Southply and U.S. Concrete Florida and the purported issuance of 469,199 Piper shares. As a result of this action which Chris-Craft had demanded, effective April 21, 1969 the NYSE ended its suspension of trading in Piper stock, and withdrew its delisting proceedings against Piper.

Piper's Issuance of False and Misleading Financial Statements

32. On or about April 29, 1969 the Management Directors caused Piper to issue and publicly announce a false and misleading financial statement for the six months ended March 31, 1969. Said financial statement represented that Piper's per share earnings were the same as the equivalent 1968 period when in fact they were materially less, which distortion was accomplished by the adoption of a new accounting method to raise earnings in 1969 without stating that a comparable adjustment was not being made in the 1968 figures and by the deliberate deferral of certain material losses to a later reporting period.

Entry of Bangor Punta into Conspiracy

33. On May 7, 1969 Chris-Craft defined and publicly announced the terms of its exchange offer to buy 300,000 shares of Piper stock with the right to buy an additional 100,000 shares which, if successful, would have given Chris-Craft a majority of Piper's issued and outstanding stock. In exchange for each share of Piper stock,

Chris-Craft proposed to offer one share of new Chris-Craft $2 preferred stock and two warrants to buy one share each of Chris-Craft common stock.

34. In further pursuit of their aforesaid plan and scheme, the Management Directors, First Boston, Miller and Bayard, having failed in their other efforts to stop Chris-Craft from making its exchange offer, enlisted defendants Bangor Punta, Salgo and Wallace and the other Bangor Punta directors in their unlawful scheme to interfere with and render unsuccessful Chris-Craft's exchange offer.

35. On May 8, 1969 the defendants caused Piper and Bangor Punta to issue press releases and statements (hereinafter the "Piper-Bangor Punta announcement") to be disseminated through the means and instrumentalities of interstate commerce, including in the Southern District of New York, wherein it was stated (1) that Bangor Punta had agreed to acquire more than 500,000 shares of Piper stock from the Piper family, (2) that the agreement is a first step in a proposed consolidation of Bangor Punta and Piper, (3) that under the agreement and exchange offer the shareholders of Piper would receive a "package of Bangor Punta securities to be valued in the judgment of First Boston Corp. at not less than $80 per Piper share," (4) that the "sales of the combined companies would reach $450,000,000 in fiscal 1969 with about $180,000,000 or 40% in the aircraft, recreational and leisure time fields," and (5) that Bangor Punta was to make an "exchange offer," while also stating

hat a "merger" of the two companies would bring Bangor unta into the light aircraft business.

36. The Piper-Bangor Punta announcement was false nd misleading in that it failed to disclose:

(a) that Bangor Punta, the Piper family and First Boston did not intend that the package of securities to be offered to the Piper shareholders would have a market value or resale value of $80 per Piper share and knew that the package would have to consist primarily of marginal and unlisted securities, such as warrants and debentures, exercisable and convertible at prices far in excess of the market value of Bangor Punta common stock;

(b) that an offering of Bangor Punta securities in exchange for shares of Piper could be made only by registration statement filed with and cleared by the SEC;

(c) that no registration statement had been filed by Bangor Punta with the SEC and that, when filed, it would take a considerable amount of time for clearance;

(d) that the announcement itself was a violation of SEC rules, including Rule 135, and, as a result, subjected Bangor Punta to sanctions;

(e) that although the press release suggested that there would be a merger of Piper and Bangor

Punta the directors of Piper had not even been asked to consider an agreement with Bangor Punta, or told that such an agreement was pending; and

(f) that the Piper family would receive a bonus for its stock, that could exceed $13,000,000, if they succeeded in persuading the independent shareholders of Piper not to tender their shares to Chris-Craft, but to sell or tender sufficient shares to Bangor Punta to give it more than 50% of the outstanding shares of Piper.

37. So eager were defendants to interfere with Chris-Craft's exchange offer, as described in Chris-Craft's May 7, 1969 announcement, that they issued the aforesaid May 8, 1969 announcement without even waiting for all the parties to execute the May 8 agreement. In order to induce several members of the Piper family subsequently to execute the May 8 agreement, defendants William T. Piper, Jr., Howard Piper and Thomas F. Piper, with the assistance of First Boston, entered into a secret side-agreement by which such family members were guaranteed a cash resale value for the Bangor Punta securities received by them in the exchange offer in an amount not less than a value to be confidentially placed on such securities by First Boston.

38. The Piper-Bangor Punta announcement, and the understandings of the defendants with respect thereto, were designed for the purpose of interfering with Chris-Craft's exchange offer and were calculated to have and did have the effect of artificially manipulating downward the price at which

shares of Chris-Craft were traded on May 8, 1969 from a high of $48.25 per share to a low of $44.50 per share, while causing the price of both Piper and Bangor Punta to increase, thus adversely affecting Chris-Craft's exchange offer.

Parking Arrangements for Piper Stock

39. Prior to May 8, 1969 in violation of SEC Rule 10b-5 and interpretations of the rule upon which defendants claimed to rely in making the May 8 announcement, defendant Salgo secretly tipped at least one broker to the fact that Bangor Punta intended to enter into an agreement with the Piper family to seek control of Piper. Such advance information was given for the purpose of (a) enabling the broker to purchase Piper stock on the open market for resale to Bangor Punta, (b) depriving Chris-Craft of the opportunity of acquiring said shares on its exchange offer, and (c) assuring Bangor Punta in advance of its agreement with the Piper family that it would be able to secure working control of Piper to the detriment of Chris-Craft. Piper shares acquired as a result of such advance information were in fact resold to Bangor Punta and not tendered to Chris-Craft.

40. After the May 8, 1969 announcement, the defendants, or some of them, continued to encourage others to purchase shares in the open market with the understanding that they would be resold to Bangor Punta and not tendered to Chris-Craft.

Illusory Market Strength
of Bangor Punta Stock

41. For the purpose of providing artificial support

to the value of Bangor Punta common stock, between the May 8, 1969 announcement and the close of Bangor Punta's exchange offer, at least the major institutional creditor and equity holder of Bangor Punta, which was in a control position, purchased 160,000 shares or more of Bangor Punta common stock on the open market in scattered transactions to create the impression that broad-based market strength existed for such securities.

Recommendations by the Piper Family

42. By means of misleading communications, following May 8, 1969, Piper and the Management Directors, with the knowledge and at the request of Bangor Punta, engaged in efforts to induce the shareholders of Piper to tender their shares to Bangor Punta rather than to Chris-Craft, to wit:

(a) By letter dated June 4, 1969 on the letterhead of Piper signed by defendant W. T. Piper, Jr., as Chairman and President of Piper, Piper described the terms of Bangor Punta's exchange offer contained in its preliminary prospectus dated May 29, 1969, and urged them: "In your own interests . . . to read and study this material carefully."

(b) By letter dated June 20, 1969, on the letterhead of Piper and signed by defendant W. T. Piper, Jr., all Piper shareholders were advised that the Executive Committee of Piper believed that the Chris-Craft offer "is not in your best

interests and you should therefore continue to reject it." The letter went on to make specific criticisms of the Chris-Craft exchange offer, and stated in bold print that no member of Piper's management would accept the Chris-Craft offer.

(c) By letter dated July 25, 1969 and signed by defendant W. T. Piper, Jr., Piper's shareholders were told that the Piper Board of Directors "strongly recommend that you accept the Bangor Punta offer" which became effective on July 18, 1969 and that "a combination with Bangor Punta is in the best interests of all the shareholders." Piper's shareholders were further told not to hesitate to telephone defendant First Boston, and even provided its number in New York.

43. The aforesaid letters were misleading in material respects in that they failed to disclose:

(a) that under the terms of the May 8, 1969 agreement the Piper family stood to gain over $13,000,000 from promoting the Bangor Punta offer over the Chris-Craft offer and by inducing Piper shareholders to tender or otherwise sell to Bangor Punta a majority of Piper's outstanding stock:

(b) that the side-agreement described in paragraph 37 herein had been entered into which guaranteed a select group of family members a certain resale value for the Bangor Punta securities to be received by them;

(c) that the principal members of Piper's management were under a contractual obligation to tender to Bangor Punta, and could not therefore consider acceptance of the Chris-Craft offer;

(d) that Piper's financial analysts had concluded that the Bangor Punta offer was detrimental to the interests of Piper; and

(e) that criticisms which Piper made of the Chris-Craft exchange offer, such as that it was a fully taxable transaction and required an irrevocable proxy, also applied to the Bangor Punta offer.

44. The Management Directors also caused Piper to hire at Piper's expense but for their benefit a proxy solicitation firm to urge Piper's shareholders not to tender to Chris-Craft but to tender to Bangor Punta. Said firm, acting on behalf of the Piper family, Piper and Bangor Punta at the same time, emphasized that the Piper management favored the Bangor Punta offer but failed to disclose the facts described above and repeated misleading statements contained in Bangor Punta's prospectus.

The Misleading Bangor Punta Prospectuses

45. The defendants sought to induce, and did induce, Piper shareholders to accept the Bangor Punta exchange offer, and to reject the Chris-Craft exchange offer, by means of false and misleading preliminary and final prospectuses dated May 29, 1969 and July 18, 1969, respectively, which were disseminated to all Piper shareholders.

46. Said prospectuses were prepared by Bangor Punta, and information on Piper was supplied by Piper and by the Management Directors. First Boston acted on both sides of the transaction, was designated in the prospectuses as "Dealer-Manager" of the exchange offer and consented to the use of its name on said prospectuses with the intention that it be relied upon by the Piper shareholders.

47. The preliminary and final prospectuses were false and misleading in material respects, including the following:

(a) The prospectuses reported that Bangor Punta, on a consolidated basis, had a shareholders equity of $120,081,338, without disclosing that the consolidated assets had been overstated by approximately $22,000,000, representing about 20% of its net worth and including a $14,000,000 overstatement of the assets of the Bangor and Aroostook Railroad. On or about December 2, 1969, after it had acquired over 50% of the stock of Piper, Bangor Punta announced that for the year ended September 30, 1969, it had written off or down approximately $22,000,000 in assets carried on its financial statements in the July 18, 1969 prospectus.

(b) The prospectuses carried the assets of the Bangor and Aroostook Railroad at $19,000,000 and described the railroad as a going business without disclosing that it was negotiating to sell the railroad, and had reached an agreement in principle with

a buyer to sell the railroad for only $5,000,000, subject to approval of Bangor Punta's Board of Directors and the Interstate Commerce Commission, which agreement was not to be finalized or disclosed until the exchange offer was completed.

(c) The prospectuses described the May 8, 1969 agreement between the Piper family and Bangor Punta without disclosing that the secret side-agreement described in paragraph 37 herein had been entered into guaranteeing said members of the Piper family a certain cash resale value not disclosed to or made available to other members of the Piper family or to the public shareholders of Piper. Said side-agreement was not revealed to plaintiff until April 1970, when it was subpoenaed from a member of the Piper family.

(d) The prospectuses did not disclose the inherent conflict of interest of First Boston in that it was acting as Dealer-Manager for Bangor Punta and as agent for Piper and the Piper family and was to pass upon the value of the securities package to be offered to the public. This conflict of interest acted to the great detriment of Chris-Craft and the public in that First Boston did not act in accordance with its obligations under the securities laws when it did not make or require disclosure of the secret side-agreement described in paragraph 37 herein or the confidential opinion which it was asked to give

and gave pursuant to and in furtherance of that agreement.

(e) The prospectuses failed to disclose the safety problems relating to the operation of the Piper PA-30 airplane and that it would be necessary for Piper to undertake a retrofit of the almost 2,000 such aircraft in the hands of the public.

(f) The prospectuses failed to disclose that, in part as a result of the accident rate of the PA-30, Piper's insurance premium had been materially increased. To conceal this fact, premium expense which therefore had been shown separately was lumped into general administrative expense.

(g) The prospectuses failed to disclose that serious difficulties had been encountered in the production of the Pocono, which would require the termination of plans to produce this model and the idling of a $2,000,000 plant constructed to produce it.

(h) The prospectuses repeated the misleading comparison, described at paragraph 32 herein of the six-month earnings for 1969 with the six-month earnings for 1968, without disclosing that expenses properly chargeable to the six-month 1969 period were being allocated to a later period not shown in the prospectus. It was not disclosed that, using the same accounting method for the first six months

of 1969 as had been used for 1968 earnings, Piper's earnings would have been materially lower for tne first six months of 1969.

(i) The prospectuses did not fairly show the dilution in Bangor Punta's earnings which would result from the warrants to be issued pursuant to the exchange offer.

(j) The prospectuses failed to disclose the effect that Bangor Punta's cash purchases of shares of Piper stock between May 14 and May 23, 1969 had in the marketplace, as alleged in Count Three herein.

48. In its final prospectus Bangor Punta made a disclaimer for the first time that "No guarantee of, or representation as to, the value of the securities and/or cash offered by Bangor Punta pursuant to the Exchange Offers is or can be made."

49. Although the press release which implanted the notion that the offer would be worth $80 a share, and the preliminary prospectus which perpetuated it had been given wide circulation for several months, Bangor Punta set a closing date of merely five business days for its exchange offer so that Piper shareholders would be pressured into tendering their stock to Bangor Punta and rejecting the Chris-Craft exchange offer without discovering that the market value of the Bangor Punta exchange offer was substantially less than the promised $80 a share.

50. In fact, at no time after the effective date of its exchange offer did the Bangor Punta securities package have a market value of as much as $80 a share, and even on the date the exchange offer closed on July 29, 1969 its value had declined to approximately $70.

51. By reason of the foregoing acts and misrepresentations, Bangor Punta received from the public on its exchange offer 111,628 shares of Piper which otherwise would not have been tendered to it and might have been tendered to Chris-Craft. These shares, together with the Piper family shares and the 120,200 shares of stock unlawfully acquired for cash as described in Count Three herein, gave Bangor Punta working control of Piper, which was accomplished by the reconstitution of the Piper Board of Directors referred to in paragraph 4 herein.

Post-Exchange Offer Purchases

52. After the expiration of its exchange offer, and with working control of Piper, Bangor Punta continued to purchase shares of Piper stock for cash in transactions arranged by the Management Directors in furtherance of their efforts to obtain a bonus of up to $13,000,000 under the May 8, 1969 agreement. Bangor Punta also secretly purchased shares of Piper stock on the PBWSE until it acquired a majority of Piper outstanding stock.

53. In such manner, subsequent to August 8, 1969 Bangor Punta purchased for cash approximately 103,975 of Piper stock, which increased its percentage interest in Piper

from approximately 45% to approximately 50.9% of the outstanding Piper shares.

COUNT TWO

54. Chris-Craft repeats the allegations of paragraphs 1 through 7, 35, 38, and 48 through 51, as if the same were set forth at length herein.

55. The Piper-Bangor Punta May 8, 1969 announcement was made at a time when no registration statement covering the Bangor Punta securities to be exchanged was in effect and constituted the use of means or instruments of interstate commerce to offer to sell such securities through the use of a prospectus or otherwise, in violation of Section 5 of the Securities Act of 1933, as amended, and Rule 135 promulgated thereunder.

56. The defendants were well aware that the SEC had recently, in a well-publicized ruling, adopted sanctions against a company making an exchange offer which had made an announcement of a less inflammatory nature than the Piper-Bangor Punta announcement. With this knowledge, the defendants willfully and maliciously caused the announcement to be issued in order to interfere with the Chris-Craft exchange offer.

COUNT THREE

57. Chris-Craft repeats the allegations of paragraphs 1 through 53, as if the same were set forth at length herein.

58. On April 7, 1969, at a meeting called by the SEC, the staff of the SEC informed Chris-Craft (a) that any further purchases by Chris-Craft of shares of Piper stock, other than by means of the exchange offer, would be regarded by the SEC as in willful violation of Section 10 of the Securities Exchange Act of 1934 and Rule 10b-6 thereunder, and would subject it to the penalties for willful violation of securities laws, (b) directed Chris-Craft not to purchase shares of Piper stock during the pendency of its exchange offer and (c) informed Chris-Craft that Piper was being advised that this same warning and direction applied to shares of Piper stock by it, its management and by any third parties acting in concert with any of them.

59. Chris-Craft made no purchases of shares of Piper stock from the time it received the directive from the SEC on April 7, 1969 until after the close of its exchange offer.

60. Bangor Punta, between May 14 and May 23, 1969, acted in willful violation of Section 10 of the Securities Exchange Act of 1934 and Rule 10b-6 thereunder, and purchased 120,200 shares of Piper stock, thereby gaining a decided advantage over Chris-Craft in the struggle for control of Piper.

61. In response to Bangor Punta's illegal cash purchases of 120,200 Piper shares, the price at which Piper stock was trading on the NYSE increased between May 14 and May 23, 1969 from approximately $72.50 to a high of $77.50, causing many Piper shareholders to assume that the price increase had resulted solely from the bullish effect of Bangor

Punta's exchange offer on the market and to decide to tender to Bangor Punta rather than to Chris-Craft under its competing tender offer.

RELIEF UNDER ALL COUNTS

62. As a result of the foregoing acts and courses of conduct, Bangor Punta ultimately acquired 838,156 shares of Piper, or 50.9% of Piper's outstanding stock. It has thus secured the power to elect a majority of the Board of Directors, to declare or withhold dividends, to appoint officers and to dominate completely Piper's affairs, even to the extent of causing a merger or issuing new shares of stock without the consent of the other shareholders.

63. Chris-Craft owns 697,495 of Piper stock, or 42.6% of Piper's outstanding stock, acquired at a cost of over $45,000,000 in cash and in the value of its securities.

64. The foregoing acts and courses of conduct by the defendants misled Chris-Craft and caused it to buy shares of Piper at prices substantially in excess of their true value, required Chris-Craft to incur substantial costs and expenses to protect its interest in Piper and sharply decreased the value of Chris-Craft's holdings in Piper, which has caused Chris-Craft damages of at least $44,000,000.

65. But for the unlawful acts of the defendants described herein, Chris-Craft would have achieved control of Piper, or at least the price of Piper common stock during 1969 would not have been at the artificially high level to which it was driven by defendants' unlawful conduct.

66. Chris-Craft has no adequate remedy at law.

WHEREFORE, Chris-Craft demands judgment:

1. Enjoining and restraining defendant Bangor Punta and all persons acting on its behalf from voting all shares of Piper which it acquired in violation of the securities laws subsequent to May 8, 1969, as long as such shares of Piper stock are held directly or indirectly by Bangor Punta.

2. Requiring Bangor Punta to divest, by public auction or in such other manner as the Court may prescribe, all shares of Piper stock acquired by it in violation of the securities laws, including (a) the 120,200 shares purchased between May 14 and 23, 1969, (b) approximately 111,628 shares acquired pursuant to its July 18, 1969 exchange offer and (c) approximately 103,975 shares acquired subsequent to August 8, 1969.

3. Requiring defendants to pay to Chris-Craft compensatory damages to be determined by the Court and estimated as of the date of this complaint to be no less than $44,000,000, together with punitive damages in the amount of $1,000,000.

Dated: New York, N.Y.
June 9, 1970

PAUL, WEISS, GOLDBERG, RIFKIND,
WHARTON & GARRISON

By _____
Arthur L. Liman

_____
Joseph J. Ackell

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345 Park Avenue
New York, N.Y. 10022

935-8000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

CHRIS-CRAFT INDUSTRIES, INC., :

Plaintiff, : 69 Civ. 2227: MP

-against- : ANSWER AND COUNTERCLAIM OF CERTAIN DEFENDANTS TO SECOND AMENDED COMPLAINT

PIPER AIRCRAFT CORPORATION, et al., :

Defendants. :

- -x

ANSWER AND COUNTERCLAIM OF CERTAIN DEFENDANTS TO SECOND AMENDED COMPLAINT

Defendants Piper Aircraft Corporation (hereinafter referred to as "Piper") and Thomas F. Piper, William T. Piper, Jr. and Howard Piper, (hereinafter referred to as the "Piper defendants"), answering the second amended complaint herein:

FIRST DEFENSE TO COUNT ONE

1. Deny each and every allegation contained in paragraph 1 of the second amended complaint, except admit that plaintiff purports to bring this action under the statutes and rules therein cited.

2. Deny each and every allegation contained in paragraphs 2, 10, 11, 13, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 30, 32, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 49, 50, 51, 52 and 53 of the second amended complaint.

3. Admit the allegations contained in paragraphs 3, 4 and 8 of the second amended complaint.

4. State that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the second amended complaint, except admit

that Chris-Craft Industries, Inc. ("Chris-Craft") owns some shares of Piper common stock.

5. Deny each and every allegation contained in the last sentence of paragraph 6(a) of the second amended complaint. Admit the allegations contained in the first three sentences of paragraph 6(a) and paragraphs 6(b) and 6(c) of the second amended complaint.

6. Admit the allegations contained in the first two sentences of paragraph 7 of the second amended complaint. Deny each and every allegation contained in the third sentence of paragraph 7 of the second amended complaint.

7. Deny each and every allegation contained in paragraph 9 of the second amended complaint, except admit that on or about January 23, 1969, Chris-Craft, for the first time, publicly announced that it had acquired shares of Piper common stock and proposed making a tender offer for 300,000 shares of Piper common stock at $65 per share, with a view to control of Piper, and that the closing price of the Piper common shares on the New York Stock Exchange on January 22, 1969 was $52.50 per share.

8. Deny each and every allegation contained in paragraph 12 of the second amended complaint, except admit that on or about January 24, 1969, Chris-Craft made a tender offer to shareholders of Piper for 300,000 shares of Piper common stock at $65 per share, and that Piper sent letters to its shareholders dated January 27 and January 28, 1969, and refer to those letters for the full contents thereof.

9. Deny each and every allegation contained in the first sentence of paragraph 14 of the second amended complaint. Admit the second sentence of paragraph 14 of the second amended complaint.

10. Deny each and every allegation contained in paragraph 18 of the second amended complaint, except admit that the agreement between Piper and Grumman Aircraft Engineering Corporation was terminated by mutual consent on or about March 18, 1969.

11. Deny each and every allegation contained in paragraph 19 of the second amended complaint, except admit that on February 27, 1969, Chris-Craft filed a Form S-1 with the Securities and Exchange Commission by which Chris-Craft proposed to offer to exchange unspecified amounts of certain of its securities for shares of Piper common stock, and refer to the Form S-1 for the full terms and provisions thereof.

12. Deny each and every allegation contained in paragraph 28 of the second amended complaint, except admit that on or about March 31, 1969, Chris-Craft instituted an action against Piper, the Piper defendants and others in the Supreme Court of the State of New York, County of New York and refer to the pleadings and order therein for the full contents thereof.

13. Deny each and every allegation contained in paragraph 29 of the second amended complaint, except admit that trading in Piper common stock was suspended on the New York Stock Exchange commencing April 7, 1969.

14. Deny each and every allegation contained in paragraph 31 of the second amended complaint, except admit that the transactions with South Ply and U. S. Concrete Pipe Company of Florida were rescinded on April 14, 1969 and that the suspension of trading in Piper common stock was terminated effective April 21, 1969.

15. Deny each and every allegation contained in paragraph 33 of the second amended complaint, except admit that on or about

May 7, 1969, Chris-Craft announced that it had filed an amendment to the S-1 previously filed with the Securities and Exchange Commission and refer to such announcement and amendment for the full terms and conditions of the exchange offer referred to.

16. Deny each and every allegation contained in paragraph 35 of the second amended complaint, except admit that on May 8, 1969, Piper and Bangor Punta issued press releases and refer to such releases for the full contents thereof.

17. Deny each and every allegation contained in paragraph 46 of the second amended complaint, except admit that prospectuses were prepared by Bangor Punta and information on Piper was supplied by Piper and that First Boston was designated in the prospectuses as "dealer-manager".

18. Deny each and every allegation contained in paragraph 48 of the second amended complaint except admit that the final prospectus was filed and refer to such prospectus for the full terms and provisions thereof.

FIRST DEFENSE TO COUNT TWO

19. Repeat the admissions and denials herein with respect to paragraphs 1 through 7, 35, 38 and 48 through 51 of the second amended complaint as though set forth herein at length.

20. Deny each and every allegation contained in paragraphs 55 and 56 of the second amended complaint.

FIRST DEFENSE TO COUNT THREE

21. Repeat the admissions and denials herein with respect to paragraphs 1 through 53 of the second amended complaint as though set forth herein at length.

22. State that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 58 and 59 of the second amended complaint.

23. Deny each and every allegation contained in paragraphs 60 and 61 of the second amended complaint.

SECOND DEFENSE TO ALL COUNTS

24. Deny each and every allegation contained in paragraphs 62, 63, 64, 65 and 66 of the second amended complaint.

THIRD DEFENSE TO ALL COUNTS

25. The allegations of the second amended complaint fail to state a claim or claims against Piper or the Piper defendants upon which relief can be granted.

FIRST AFFIRMATIVE DEFENSE

26. By reason of the wrongful and unlawful conduct of Chris-Craft hereafter set forth, Chris-Craft enters this court with unclean hands and is barred from any relief demanded in the second amended complaint.

SECOND AFFIRMATIVE DEFENSE

27. After Chris-Craft announced the aforementioned cash tender offer in January 1969, Piper became aware of the prior corporate history of Chris-Craft and its management and, acting in the best interests of all the Piper shareholders, decided that the acquisition of control of Piper by Chris-Craft would not be in the best interests of the Piper shareholders. Piper therefore undertook to oppose Chris-Craft's attempts to acquire control of Piper, the Piper defendants rejected Chris-Craft's offers to them of personal advantage in exchange for co-operation with Chris-Craft's take over attempt, and

Piper searched for corporate opportunities which would promote the interests of all Piper shareholders.

THIRD AFFIRMATIVE DEFENSE

28. Chris-Craft is estopped from recovering herein as it failed to take appropriate steps to mitigate its alleged damages.

COUNTERCLAIM

29. Beginning at least as early as October 1968 Chris-Craft its officers and directors and its financial advisors have undertaken and engaged upon an unlawful conspiracy, plan and scheme in contravention of the federal securities laws and other applicable federal statutes and regulations, including Sections 5, 10, 12 and 17 of the Securities Act of 1933 (15 U.S.C. §77(a) et seq.) ("the 1933 Act"), Sections 7, 9, 10, 13 and 14 of the Securities Exchange Act of 1934 (15 U.S.C. §78(a) et seq.) ("the 1934 Act") and Sections 3, 7, and 17 of the Investment Company Act of 1940 (15 U.S.C. §80 a-1 et seq.) ("the 1940 Act") and the rules promulgated thereunder with respect to each such act. The purpose of such unlawful conspiracy, plan and scheme was to acquire control of Piper and to merge or otherwise consolidate Chris-Craft and Piper in a manner favorable to Chris-Craft and contrary to the best interests of Piper and its shareholders.

30. This counterclaim is asserted pursuant to Rule 13 of the Federal Rules of Civil Procedure.

31. Jurisdiction of this court is based on Section 22 of the 1933 Act, Section 27 of the 1934 Act and Section 43 of the 1940 Act. The acts and transactions complained of herein occurred, in whole or in part, within the Southern District of New York.

32. Pursuant to the aforementioned conspiracy, plan and scheme, Chris-Craft has undertaken the following overt acts, among others:

(a) Secretly acquired shares of Piper common stock from a registered investment company in a negotiated transaction without prior approval of the SEC in violation of Section 17 of the 1940 Act;

(b) Disclosed the aforementioned conspiracy, plan and scheme, together with other confidential information to representatives of the registered investment company, without making similar disclosure to the public; and

(c) Failed to fully and publicly disclose in press releases, in public documents filed with the SEC, in its December 1968 Debenture prospectus, or in its January 1969 tender offer its true intentions with respect to Piper, its lack of financial ability to undertake the acquisition of Piper, its intention to elect persons previously selected by it as directors of Piper, and other material facts.

CHRIS-CRAFT'S ACQUISITION OF
STOCK PRIOR TO ITS TENDER OFFER

33. Commencing on or about December 30, 1968 and ending prior to January 23, 1969, Chris-Craft acquired about 99,400 shares of Piper's common stock in the open market by purchases on the New York Stock Exchange. These securities were purchased through a secret numbered brokerage account at Mitchell Hutchins & Co. which was established at least as early as November 1968 for the express purpose of purchasing Piper stock.

34. On January 23, 1969, Chris-Craft in a negotiated transaction purchased 101,100 shares of Piper's common stock from Technology Fund, Inc., an investment company registered under the 1940 Act. Chris-Craft did not, prior to purchasing Piper's stock from

the registered investment company, seek or obtain the order of the SEC required by the 1940 Act exempting from the Act Chris-Craft's aforesaid purchase.

CHRIS-CRAFT'S SCHEDULE 13D FILING WITH THE COMMISSION AND PIPER PRIOR TO THE TENDER OFFER

35. On January 23, 1969 Chris-Craft filed with the SEC a document entitled "Schedule 13D - Information To Be Included in Statements Filed Pursuant to Rule 13d-1 or 14d-1", dated January 22, 1969 (hereinafter "Schedule"). That Schedule, together with subsequent amendments thereto, was materially deficient in the following respects:

(a) Item 3 of the Schedule, entitled "Source and Amount of Funds or Other Consideration", was false and misleading and omitted material facts concerning (1) the specific source of the funds used by Chris-Craft to acquire the shares of Piper stock, (2) the amount of the proceeds of Chris-Craft's December 1968 public offering used for such acquisitions, (3) the amount of bank and other credit used for such acquisitions, (4) the amount of the proceeds from the aforementioned public offering available to pay for tendered shares and (5) the amount Chris-Craft expected, or would have, to borrow to finance its purchase of tendered shares, and the terms and conditions of such proposed borrowings;

(b) Item 4 of the Schedule, entitled "Purpose of Transaction", was false and misleading and failed to describe Chris-Craft's proposed steps and purpose to effectuate its aforementioned overall plan with respect to Piper: and

(c) Item 5 of the Schedule, entitled "Interest in Securities of the Issuer", was false and misleading and failed to disclose that Chris-Craft purchased shares of Piper's stock from an

"institutional investor" in a negotiated transaction at a time when Chris-Craft was an affiliated person of that investor. Chris-Craft also failed to disclose that prior SEC approval of that transaction was required under the 1940 Act.

CHRIS-CRAFT'S PRESS RELEASE

36. On January 23, 1969 Chris-Craft issued a press release which announced its "Offer to Purchase" up to 300,000 shares of Piper's common stock at $65 per share. The release was designed to, and did solicit proxies in support of Chris-Craft's unlawful plan. The release constituted a solicitation of proxies without appropriate compliance with the filing and disclosure requirements of the SEC's proxy rules.

CHRIS-CRAFT'S TENDER OFFER

37. On January 24, 1969 and on numerous dates thereafter Chris-Craft caused to be published in newspapers of wide general circulation and transported by the mails and interstate commerce, an "Offer to Purchase" up to, and possibly more than, 300,000 shares of Piper's common stock, at a price of $65 per share.

38. The "Offer to Purchase" required transmittal of an irrevocable proxy with the tendered shares and constituted an overt solicitation by Chris-Craft of proxies without compliance with the proxy rules of the SEC.

39. The "Offer to Purchase" further stated that

> "Chris-Craft is purchasing the Piper shares for investment with a view to control of Piper, but it does not presently have any specific plan or proposal to liquidate Piper, to acquire control of Piper, to sell its assets or to merge with any other companies or to make any other major change in its business or corporate structure. If this Offer is successfully completed, Chris-Craft will give consideration to some form of combination between it and Piper."

That statement was false and misleading and omitted to disclose the material fact that Chris-Craft did have a specific plan and was implementing it in attempting to elect its nominees as directors at Piper's 1969 annual meeting in order to acquire control of Piper and to combine with it.

40. As a result of the proxy solicitation contained in the "Offer to Puchase", Chris-Craft obtained purported proxies covering more than 300,000 shares and voted the same at Piper's 1969 annual meeting in violation of Rule 14a-4 of the SEC's proxy rules.

CHRIS-CRAFT's LETTER OF JANUARY 28, 1969

41. Commencing on or about December 30, 1968 and continuing to February 3, 1969, Chris-Craft acquired approximately 140,000 shares of Piper's common stock in the open market. Chris-Craft intentionally did not demand or request from the sellers of such shares, at the time of acquiring them, either as part of its contract or otherwise, the execution of proxies by the shareholders of record on January 3, 1969 to vote such shares at Piper's 1969 annual meeting.

42. On January 28, 1969 Chris-Craft addressed letters to the shareholders of record of such shares. Such letters were false and fraudulent in that they stated that Chris-Craft, rather than the sellers of such shares, should be entitled to vote them at Piper's 1969 annual meeting, that the New York Business Corporation Law imposed a duty on the record holder of shares to issue to Chris-Craft, upon demand, a proxy to vote such shares and that Chris-Craft was entitled to make such a demand, despite the fact that Piper is a Pennsylvania corporation and not subject to the New York Business Corporation Law.

43. The aforesaid letters were calculated to result and did result in the procurement by Chris-Craft, from the shareholders of

record who received such letters, the execution of proxies which Chris-Craft voted in favor of its nominees for directors at Piper's 1969 annual meeting.

CHRIS-CRAFT's EXCHANGE OFFERS

44. On February 27, 1969, in furtherance of the aforementioned conspiracy, plan and scheme, Chris-Craft filed a Registration Statement and form of Prospectus, Form S-1 with the SEC. The S-1 was subsequently amended and became effective on May 15, 1969. Thereafter Chris-Craft filed a second Registration Statement and form of Prospectus which prospectus became effective July 24, 1969.

45. The said Registration Statements and Prospectuses were false, misleading and deficient in many material respects and failed to disclose material facts, including, among others, the following:

(a) The actual earnings of Chris-Craft on a per share basis;

(b) The accurate pro forma financial information with respect to Piper and Chris-Craft;

(c) The source of the funds utilized by Chris-Craft to acquire shares of Piper common stock and the terms and conditions of the loan or loans made by Chris-Craft to obtain such funds;

(d) The prior corporate history of Chris-Craft and its management to the extent hereafter set forth;

(e) The absence of any study by Chris-Craft of the aircraft manufacturing industry, including Piper's role and position therein and its capital requirements;

(f) The inability of Chris-Craft to manage and operate Piper's business without qualified personnel experienced in the design, manufacture, sale and distribution of general aviation aircraft;

(g) The fact that Chris-Craft's offer to exchange Chris-Craft securities for Piper common stock would, if less than majority control is acquired, result in Chris-Craft becoming an investment company within the meaning of Section 3(a) of the Investment Company Act of 1940 and subject to all the restrictions therein and that the exchange offer constitutes a violation of Section 7 of said Act;

(h) The fact that in February 1969, Chris-Craft borrowed the sum of $15,000,000 from a national bank under circumstances which constituted a violation of Regulation U of the Board of Governors of the Federal Reserve System issued pursuant to Section 7(d) of the Securities Exchange Act of 1934;

(i) The lack of any plan for the repayment by Chris-Craft of such $15,000,000 loan, which repayment can be compelled upon demand by the bank;

(j) The fact that Chris-Craft, prior to the effective date of its exchange offer, intended to bring, and thereafter during the pendency thereof, did bring, an action against Piper and others demanding damages in the sum of $45,000,000, which action places Chris-Craft directors, who also purport to act as directors of Piper, in a conflict of interest which requires them to resign as directors of Piper;

(k) The fact that the merger of Chris-Craft and Baldwin-Montrose Chemical Co. consummated in the spring of 1968 was in violation of the federal securities laws;

(l) The fact that Chris-Craft had decided to sell its industrial division for 19 million dollars;

(m) The fact that during the period beginning February 27, 1969 and continuing until at least April 7, 1969, Chris-Craft, in

violation of Rule 10b-6, unlawfully continued to solicit the purchase of shares of Piper common stock until compelled to desist by the SEC;

(n) The fact that Chris-Craft as presently constituted, is the result of numerous mergers with viable corporations, the business of many of which is no longer being carried on by Chris-Craft;

(o) The fact that after the merger with, or acquisition of, such viable corporations, Chris-Craft's management disposed of the productive business and assets of such other corporations, and that such disposition was frequently at a loss as, for example, occurred in the case of Baldwin Rubber Company and General Artists Corporation;

(p) The fact that the purchasers of the productive business and assets of the merged or acquired corporations, in some instances, were financed by officers of Chris-Craft or the corporation itself as, for example, occurred in the case of Centlivre Brewing Co. and General Artists Corporation;

(q) The fact that Chris-Craft's management frequently used the assets of Chris-Craft to acquire stock interests in other corporations after which Chris-Craft's officers and directors became directors of such other corporation but, upon meeting resistance to a take over of such other corporation, disposed of the stock at a profit, as occurred, for example, in the case of Paramount Pictures Corporation;

(r) The fact that the history of the management of Chris-Craft has been one of utilizing the assets of Chris-Craft and its predecessor corporations for their self-aggrandizement in a manner inconsistent with the best interests of the stockholders of such corporations; and

(s) The fact that Chris-Craft's management is actually dominated and controlled by three officers who make all decisions for

the corporations as though it were their own private proprietorship without prior consultation or consideration by the Board of Directors as, for example, occurred when said officers decided to invest over $35,000,000 of the corporation's capital in Piper stock without prior approval by the Board of Directors.

MARKET MANIPULATION

46. As a further part of Chris-Craft's plan and scheme to take over control of Piper, Chris-Craft engaged in manipulative and deceptive practices designed to tie up shares of Piper stock and to create active trading in Chris-Craft securities in order to make its offers appear more attractive. Pursuant to such plan and scheme Chris-Craft:

(a) Disclosed to certain large investors that it intended to take over Piper;

(b) Advised certain brokerage houses of its intention to take over Piper and arranged to have them contact large investors and persuade such investors to purchase shares of Chris-Craft. Such investors did, in fact, purchase Chris-Craft shares on the New York Stock Exchange in many small transactions resulting in a substantial increase in the price of Chris-Craft's stock creating the impression of market strength.

CHRIS-CRAFT's UNLAWFUL FINANCING

47. Commencing in October, 1968 in furtherance of its aforementioned plan Chris-Craft made arrangements to borrow approximately $15,000,000 in transactions from a bank or group of banks as defined in Section 3(a) of the 1934 Act and Section 3(K) of Regulation U (12 CFR §221.1 et seq.) issued pursuant to Section 7(d) of the 1934 Act. These arrangements culminated in a loan to Chris-Craft in

February, 1969 which loan was "purpose credit" secured directly or indirectly by stock as defined by Regulation U. The amount of the loan was in excess of the maximum loan value permitted by Regulation U and in violation of said Regulation. The lending bank or banks knew that the loan was to be used to purchase Piper stock and that it was unlawful.

48. Pursuant to the aforementioned conspiracy, plan and scheme, Chris-Craft has instituted numerous actions and proceedings for the purpose of publicly announcing the substance of the allegations therein in order to thwart the efforts of Piper to protect the interests of Piper shareholders by resisting Chris-Craft's take over attempts and for the purpose of depressing and manipulating the market price of the Piper common stock in order to enable Chris-Craft to take over Piper on terms more favorable to Chris-Craft than to the Piper shareholders.

WHEREFORE, Piper and the Piper defendants demand judgment:

1. Dismissing the second amended complaint together with costs and disbursements of this action

2. Requiring Chris-Craft to divest in whatever manner the Court may deem proper all shares of Piper stock acquired by it in violation of the securities laws, including (a) the approximately 101,000 shares acquired from Technology Fund, (b) the approximately 304,600 shares acquired pursuant to its cash tender offer, (c) the approximately 9,100 shares acquired in the open market prior to April 7, 1969, (d) all shares purchased with the proceeds of the sale of its convertible subordinated debentures and its unlawful bank loan and (e) all shares acquired under its false and misleading exchange offer.

3. Enjoining and restraining Chris-Craft and all persons acting on its behalf from voting all shares of Piper acquired by it in violation of the securities laws, as long as such shares are held directly or indirectly by Chris-Craft.

4. Awarding such damages resulting from the conduct complained of in the counterclaim as may be found and determined by the court.

5. Granting such other and further relief as the court may deem just and proper.

Dated: New York, New York
September 1, 1970

CHADBOURNE, PARKE, WHITESIDE & WOLFF

By Zachary Shimer

A Member of the Firm
Attorneys for Defendants Piper Aircraft Corporation, Thomas F. Piper, William T. Piper, Jr. and Howard Piper
25 Broadway
New York, New York 10004
Telephone No. 344-8900

Rec'd on Trial 3/18/71

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

CHRIS-CRAFT INDUSTRIES, INC., :

Plaintiff, : 68 Civ 2227: MP

-against- :

PIPER AIRCRAFT CORPORATION, et al., : ANSWER TO SECOND AMENDED COMPLAINT

Defendants. :

- x

Defendants The First Boston Corporation, Paul L. Miller and N. Bayard, by their attorneys Sullivan & Cromwell, for their answer to the second amended complaint:

FIRST DEFENSE TO COUNT ONE

1. Deny each and every allegation contained in paragraph 1 of the second amended complaint, except admit that plaintiff purports to bring this action under the statutes and rules therein cited.

2. Deny each and every allegation contained in paragraphs 2, 10, 11, 13, 16, 17, 20, 21, 22, 24, 25, 26, 27, 30, 34, 36, 37, 38, 45, 47, 49 and 51 of the second amended complaint.

3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 32, 39, 41, 42, 43, and 44 of the second amended complaint.

4. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the second amended complaint, except admit that Chris-Craft Industries, Inc. ("Chris-Craft") owns

shares of Piper Aircraft Corporation ("Piper") common stock.

5. Deny each and every allegation contained in paragraph 6(a) of the second amended complaint, except admit that defendant Bangor Punta Corporation ("Bangor Punta"), a Delaware corporation, is publicly held, and that its common and preferred stock trade on the NYSE.

6. Deny each and every allegation contained in paragraph 7 of the amended complaint, except admit that defendant The First Boston Corporation ("First Boston") is a corporation doing business in the City, County and State of New York engaged in, among other things, investment banking, and that Paul L. Miller is the President and N. Bayard a Vice President thereof.

7. Deny each and every allegation contained in paragraph 9 of the second amended complaint, except admit that Chris-Craft made a public announcement on January 23, 1969, and refer to the announcement for the terms thereof, and further admit that the closing price of the Piper common shares on the New York Stock Exchange on January 22, 1969 was $52.50 per share.

8. Deny each and every allegation contained in paragraph 12 of the second amended complaint, except admit that on or about January 24, 1969, Chris-Craft made a tender offer to shareholders of Piper stock, and that Piper sent letters to its shareholders dated January 27 and January 28, 1969, and refer to such offer and letters for the full contents thereof.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the second amended complaint, except

admit that Piper issued an announcement on January 29, 1969, and refer to the text of the announcement for the contents thereof.

10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the second amended complaint, except deny that First Boston knew that the 300,000 shares to be issued to Grumman could not be listed on the NYSE, admit that the agreement between Piper and Grumman contained provisions with regard to the stock and proceeds, and refer to the text of the agreement for the terms thereof.

11. Deny each and every allegation contained in paragraph 18 of the second amended complaint, except admit that the agreement between Piper and Grumman Aircraft Corporation was terminated by mutual consent on or about March 18, 1969.

12. Deny each and every allegation contained in paragraph 19 of the second amended complaint, except admit that on February 27, 1969, Chris-Craft filed a registration statement with the Securities and Exchange Commission regarding a proposed exchange offer, and refer to the registration statement for the terms of the proposed offer.

13. Deny each and every allegation contained in paragraph 23 of the second amended complaint, except admit that Pittsburgh Coke issued a report to the shareholders on or about March 21, 1969, and refer to the report for the contents thereof.

14. Deny each and every allegation contained in paragraph 28 of the second amended complaint, except admit that on or about March 31, 1969, Chris-Craft instituted an

action against Piper, the Piper defendants and others in the Supreme Court of the State of New York, County of New York and refer to the pleadings and order therein for the full contents thereof.

15. Deny each and every allegation contained in paragraph 29 of the second amended complaint, except admit that trading in Piper common stock was suspended on the New York Stock Exchange commencing April 7, 1969.

16. Deny each and every allegation contained in paragraph 31 of the second amended complaint, except admit that the transactions with South Ply and U.S. Concrete Pipe Company of Florida were rescinded on April 14, 1969 and that the suspension of trading in Piper common stock was terminated effective April 21, 1969.

17. Deny each and every allegation contained in paragraph 33 of the second amended complaint, except admit that on or about May 7, 1969, Chris-Craft announced that it had filed an amendment to the S-1 previously filed with the Securities and Exchange Commission and refer to such announcement and amendment for the full terms and conditions of the exchange offer referred to.

18. Deny each and every allegation contained in paragraph 35 of the second amended complaint, except admit that on May 8, 1969, Piper and Bangor Punta issued press releases and refer to the text of said releases for the matters contained therein.

19. Deny each and every allegation contained in paragraph 40 of the second amended complaint, except deny knowledge or information sufficient to form an opinion as to the truth of the allegations with regard to the other defendants.

20. Deny each and every allegation contained in paragraph 46 of the second amended complaint, except admit that prospectuses were prepared by Bangor Punta, that information on Piper was supplied by Piper, and that First Boston was designated in the prospectuses as "dealer-manager," and deny knowledge or information sufficient to form a belief as to whether the information on Piper was supplied by Management Directors.

21. Deny each and every allegation contained in paragraph 48 of the second amended complaint except admit that the final prospectus was filed and refer to such prospectus for the full terms and provisions thereof.

22. Deny knowledge or information sufficient to form an opinion as to the truth of the allegations contained in paragraph 50 of the second amended complaint, except aver that the package of Bangor Punta securities had a value of at least $80 a share on the effective date of the Bangor Punta exchange offer.

23. Deny knowledge or information sufficient to form an opinion as to the truth of the allegations contained in paragraphs 52 and 53 of the second amended complaint except admit that after the expiration of its exchange offer and subsequent to August 8, 1969, Bangor Punta purchased additional shares of Piper stock for cash.

FIRST DEFENSE TO COUNT TWO

24. Repeat the admissions and denials herein with respect to paragraphs 1 through 7, 35, 38 and 48 through 51 of the second amended complaint as though set forth herein at length.

25. Deny each and every allegation contained in paragraphs 55 and 56 of the second amended complaint.

FIRST DEFENSE TO COUNT THREE

26. Repeat the admissions and denials herein with respect to paragraphs 1 through 53 of the second amended complaint as though set forth at length herein.

27. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 58, 59, 60 and 61 of the second amended complaint.

FIRST DEFENSE TO ALL COUNTS

28. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 62 of the second amended complaint.

29. Deny each and every allegation contained in paragraphs 63, 64, 65 and 66 of the second amended complaint.

FIRST AFFIRMATIVE DEFENSE
TO ALL COUNTS

30. The amended complaint fails to state a claim on which relief can be granted against The First Boston Corporation, Paul L. Miller, or N. Bayard.

SECOND AFFIRMATIVE DEFENSE
TO ALL COUNTS

31. Plaintiff enters this Court with unclean hands and is therefore barred from obtaining any relief under the second amended complaint, because in connection with its acquisition of Piper stock and its proposed exchange offers:

(a) It purchased Piper stock with the proceeds of a loan or loans obtained in violation of Regulation U of the Board of Governors of the Federal Reserve System;

(b) It purchased Piper stock from a registered investment company in a negotiated transaction without prior approval of the Securities and Exchange Commission in violation of Section 17 of the Investment Company Act of 1940;

(c) It purchased Piper stock in violation of Rule 10b-6 of the Securities and Exchange Commission;

(d) It filed with the Securities and Exchange Commission, in connection with its tender offer of January 23, 1969, a Schedule 13(d) which was false, fraudulent and misleading;

(e) It filed with the Securities and Exchange Commission a registration statement and prospectus which became effective on May 15, 1969, and a second registration statement and prospectus which became effective on July 24, 1969, which in the form they became effective were false, fraudulent and misleading, in violation of the Securities Act of 1933 and the Securities Exchange Act of 1934.

WHEREFORE, defendants The First Boston Corporation, Paul L. Miller and N. Bayard demand judgment:

A. Dismissing the amended complaint and awarding them the costs and disbursements of this action, and

B. Granting such other and further relief as may be just.

Dated: New York, New York
September 15, 1970

SULLIVAN & CROMWELL

By _____
(A Member of the Firm)

Attorneys for defendants
The First Boston Corporation,
Paul L. Miller and N. Bayard,
48 Wall Street,
New York, N. Y. 10005.

HAnover 2-8100

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHRIS-CRAFT INDUSTRIES, INC.,	:	
Plaintiff,	:	69 Civ. 2227:MP
-against-	:	REPLY TO COUNTERCLAIM
PIPER AIRCRAFT CORPORATION, et al.,	:	
Defendants.	:	

Plaintiff Chris-Craft Industries, Inc. ("Chris-Craft") by its attorneys, for its reply to the counterclaim of defendants Piper Aircraft Corporation ("Piper") and Thomas F. Piper, William T. Piper, Jr. and Howard Piper (the "Piper defendants"):

1. Denies each and every allegation contained in paragraphs 29, 32, 45, 46, 47 and 48.

2. Denies that it has knowledge and information sufficient to form a belief as to the truth of any of the allegations contained in paragraphs 30 and 31, except admits that the Piper defendants purport to assert their counterclaim pursuant to Rule 13 of the Federal Rules of Civil Procedure, and that the Piper defendants purport to base jurisdiction on certain provisions of federal law.

3. Denies each and every allegation contained in paragraph 33, except admits that from December 30, 1968 to January 23, 1969 Chris-Craft purchased shares of Piper common stock through a member in good standing of the New York Stock

Exchange ("NYSE"), which member in accordance with its own practices and not at the suggestion of Chris-Craft assigned Account No. 100 to such account. In further answer, Chris-Craft alleges that substantially less than 98,600 shares of Piper common stock, and less than 5% of the outstanding shares of Piper stock, had been delivered to Chris-Craft's custody and control by January 22, 1969, and Chris Craft did not have the power to vote 5% of Piper's stock on January 22, 1969.

4. Answering paragraph 34 of the complaint, Chris-Craft admits that on or about January 23, 1969, pursuant to a written agreement, Chris-Craft purchased 101,000 shares of Piper stock from Technology Fund, Inc., an investment company, and that no exemption was sought or obtained, or required to be obtained, from the Securities and Exchange Commission ("SEC") in connection with said purchase, and, except as so admitted, denies each and every allegation of said paragraph.

5. Denies each and every allegation contained in paragraph 35, except admits that it filed a Schedule 13-D with the SEC on January 23, 1969, and refers to said schedule for the terms thereof.

6. Denies each and every allegation contained in paragraph 36, except admits that on January 23, 1969 Chris-Craft published the announcement of its cash tender offer for up to 300,000 shares of Piper common stock with the right to purchase additional shares at $65 a share (the "tender offer").

7. Admits the allegations contained in paragraph 37.

8. Denies each and every allegation contained in paragraph 38 of the complaint and refers to Chris-Craft's tender offer for the terms thereof.

9. Denies each and every allegation contained in paragraph 39, except admits that the tender offer included the statement quoted in said paragraph, and refers to the tender offer for all of the terms thereof.

10. Denies each and every allegation contained in paragraph 40, except admits that Chris-Craft voted valid proxies covering more than 300,000 Piper shares at Piper's 1969 annual shareholders meeting.

11. Denies each and every allegation contained in paragraph 41, except admits that Chris-Craft acquired shares of Piper common stock in the open market between December 30, 1968.

12. Denies each and every allegation contained in paragraph 42, except admits that Chris-Craft sent its letter dated January 28, 1969 to the shareholders of Piper, and refers to said letter for the contents thereof.

13. Denies each and every allegation contained in paragraph 43, except admits that Chris-Craft received and voted proxies from Piper shareholders.

14. Denies each and every allegation contained in paragraph 44, except admits that Chris-Craft made a single offering to the shareholders of Piper by its registration statement and preliminary prospectus filed with the SEC on

February 27, 1969, and by a second registration statement and form of prospectus which became effective on July 24, 1969, for its registered exchange offer of Chris-Craft securities for shares of Piper stock.

WHEREFORE, Chris-Craft demands judgment herein on its complaint and dismissing the counterclaim of said defendants, together with the costs and disbursements of this action.

Dated: New York, New York
September 24, 1970

PAUL, WEISS, GOLDBERG, RIFKIND,
WHARTON & GARRISON

By _____

Attorneys for Plaintiff
345 Park Avenue
New York, New York 10022

(212) 935-8000

Answer of Bangor Punta Corporation, David W. Wallace and Nicolas Salgo, Defendants in Chris-Craft Industries, Inc. v. Piper Aircraft Corporation, et al., 69 Civil 2227:MP

Upon oral stipulation with Chris-Craft Industries, Inc. and with the approval of the District Court, Bangor Punta Corporation, David W. Wallace and Nicolas Salgo ("defendants") did not file an Answer to the Second Amended Complaint of Chris-Craft Industries, Inc., and it was agreed that defendants' answer consisted of a general denial of all material allegations, except that jurisdiction over both the parties and the causes of action was admitted, and the following affirmative defenses: (1) failure to state a claim upon which relief can be granted, (2) lack of capacity to maintain the action and (3) unclean hands and in pari delicto, based upon the allegation contained in the Amended Complaint in Bangor Punta Corporation v. Chris-Craft Industries, Inc., et al., 69 Civil 2354:MP (infra., pp. 161 et seq.)

C-
Signed

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Dismissed (as)
2/25/70 (signed)

BANGOR PUNTA CORPORATION, Plaintiff, - against - CHRIS-CRAFT INDUSTRIES, INC., LOEB, RHOADES & CO., SHIELDS & COMPANY, INCORPORATED, HERBERT J. SIEGEL, ALFRED L. HOLLENDER, JAMES J. ROCHLIS, HARRY H. COLL, JOHN HOPKINS, C. LEONARD GORDON, LAWRENCE R. BARNETT, VICTOR ORISTANO, WINSLOW MAXWELL, ROBERT B. HUNTER, BERNARD ART, ARTHUR G. ERPF, LOUIS C. GOAD, DAVID F. LIMONES, ALVIN R. ROZELLE, and H. V. SHERRILL, Defendants.	FIRST AMENDED COMPLAINT 69 Civ. 2354

Plaintiff, by its attorneys, Webster Sheffield Fleischmann Hitchcock & Brookfield, complaining of the defendants alleges on information and belief except as to the allegations in paragraphs 1 and 2 herein the following:

JURISDICTION

1. This Court has jurisdiction of this action pursuant to Section 22 of the Securities Act of 1933 (15 U.S.C. §77v), Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. §78aa), Section 44 of the Investment Company Act of 1940

(15 U.S.C. § 80a-43), and pendant jurisdiction, and the matters in controversy involve a claim of damages in excess of Ten Thousand Dollars ($10,000) exclusive of costs.

THE PARTIES

2. Plaintiff, BANGOR PUNTA CORPORATION ("Bangor Punta"), is a Delaware corporation with its principal place of business at One Greenwich Plaza, Greenwich, Connecticut, engaged in diverse manufacturing and service businesses with annual sales in excess of $250,000,000 a year. Bangor Punta's securities are listed and traded on the New York Stock Exchange and American Stock Exchange and are owned by more than 15,000 holders.

3. Defendant, CHRIS-CRAFT INDUSTRIES, INC. ("Chris-Craft") is a Delaware corporation with its principal place of business at 600 Madison Avenue, New York, New York. Chris-Craft's securities are listed and traded on the New York Stock Exchange and Pacific Stock Exchange.

4. Defendant Herbert J. Siegel is and at all relevant times was, President and chief executive officer, a director and a controlling person of Chris-Craft. The other individual defendants named herein are, and were at all relevant times, directors, and in some instances, also officers of Chris-Craft.

5. Defendant LOEB, RHOADES & CO. ("Loeb, Rhoades") is a partnership with its principal place of business at 42 Wall Street, New York, New York.

6. Defendant SHIELDS & COMPANY, INCORPORATED ("Shields") is a corporation with its principal place of business at 44 Wall Street, New York, New York.

THE FACTS

7. PIPER AIRCRAFT CORPORATION ("Piper") is a Pennsylvania corporation with its principal place of business in Lock Haven, Pennsylvania and is recognized as one of the leading manufacturers of light private aircraft in the United States with annual sales in excess of $97,000.000. At all relevant times, except during the period April 7, 1969 through April 18, 1969, Piper's securities were listed and traded on the New York Stock Exchange.

8. On or about December 30, 1968, there were issued and outstanding approximately 1,641,890 shares of Piper common stock of which 501,090 shares were owned beneficially, or as of record, by the late William T. Piper, Sr., one of the founders of Piper, members of his family and certain organizations controlled by them (hereinafter sometimes referred to collectively as the "Piper family"). The principal officers and directors of Piper at that time were members of the Piper family. The balance of the issued and outstanding shares of Piper common stock was held by the public.

9. Chris-Craft is, and at all relevant times was, a so-called conglomerate controlled by the defendant Siegel and his close associates. The defendant Siegel had a reputation in the financial world of being a corporate raider and continually

attempting to gain control of other corporations against their wishes and desires. Siegel and his associates made these attempts by means of various schemes, devices and tactics usually involving the acquisition of a significant block of stock of the "target" company, then after gaining a controlling interest in the target company, attempting to force a merger of the operations of such corporations into the operations of Chris-Craft. By following this program of "take over" attempts, the defendant Siegel caused Chris-Craft (formerly known as Baldwin-Montrose Chemical Corporation) to grow in a short period of time from being solely an independent manufacturer of chemicals and automobile floor mats with limited sales, to a conglomerate corporation with diverse and unrelated interests in boats and related craft, broadcasting, television, industrial and agricultural chemicals, and the manufacture of fiber and foam products for the automotive, shoe and women's wear industries, with sales in excess of $90,000,000 in 1968.

10. In or prior to October, 1968, the defendants conceived and concocted a plan and scheme to seek to acquire control of Piper by purchasing or otherwise acquiring Piper common stock for cash or Chris-Craft securities, which plan will be more fully described hereinafter. The defendants planned to follow the same general pattern of previous takeover attempts by Chris-Craft and other companies controlled by defendant Siegel. Siegel and his close associates in Chris-Craft formulated the

strategy for this takeover attempt. As will be more fully stated hereinafter, beginning in or at some time prior to October, 1968 and continuing through August 4, 1969, in its attempt to seize control of Piper, Chris-Craft was engaged in a distribution of its securities within the meaning of the Securities Act of 1933 as amended ("1933 Act"), the Securities Exchange Act of 1934 as amended (the "1934 Act"), and the Rules and Regulations of the Securities and Exchange Commission ("SEC") thereunder. The defendants deliberately and intentionally failed to comply fully with the disclosure and registration provisions of the 1933 Act and the 1934 Act but instead used various schemes and devices to conceal their unlawful activities.

11. As the initial step and in furtherance and consummation of its scheme and plan, in or about October, 1968, Chris-Craft caused to be prepared and filed with the SEC a registration statement on Form S-1 and a preliminary prospectus relating to a proposed offer to sell to its own shareholders by subscription, and to the public generally if necessary, a maximum of $26,000,000 principal amount of 6% convertible subordinated debentures in an underwriting managed by the defendants Loeb, Rhoades and Shields. On December 10, 1968, such registration statement and the final prospectus was declared effective by the SEC. Between December 10, 1968 and December 30, 1968, $21,223,200 of convertible subordinated debentures were sold by Chris-Craft to its shareholders or to the general public through underwriters by means of a prospectus which stated:

> "Such funds [proceeds of debenture sales] will be available for use in connection with further acquisitions and diversification of the Company's business . . . There are, at the present time, no understandings or agreements (. . .) with respect to any proposed acquisitions and the Company can give no assurances that any such acquisitions will be effected . . . ."

Such statement was materially false and misleading at the time the prospectus was being distributed and used by its shareholders and the general public, as the defendants well knew, because at such time the defendants had already decided to attempt to seize control of Piper and had taken a number of steps in preparation to carry out their scheme in addition to raising funds by the sale of the convertible debentures.

12. In furtherance of the scheme and plan, Chris-Craft, the defendant Siegel and his close associates in or about December, 1960, entered into a conspiracy with certain stock brokerage firms, registered investment companies and other institutional investors, whereby such firms and individuals agreed to acquire or retain, or induce others to acquire or retain, Piper common stock then owned or subsequently acquired by them, and to sell such Piper common stock to Chris-Craft after it completed its offering of its convertible debentures to its shareholders and the public on December 30, 1960.

13. As part of the above-mentioned conspiracy in December, 1960, Chris-Craft and the defendant Siegel and his close associates caused certain brokerage firms to search out

blocks of Piper common stock for the purpose of inducing the holders thereof to sell such blocks on and after December 30, 1968. On or about December 15, 1968, Chris-Craft caused to be set up at a certain brokerage firm a secret account designated "Account No. 100" which secret account was used by Chris-Craft to conceal its transactions in Piper common stock.

14. Commencing on December 30, 1968, and continuing through January 23, 1969, Chris-Craft, using the secret Account No. 100, began acquiring shares of Piper common stock in a series of several large trades over the New York Stock Exchange, from a number of substantial institutional holders of Piper common stock. By January 22, 1969, Chris-Craft had acquired a total of 98,600 shares or approximately 6.01% of the outstanding shares of Piper common stock. All but 3,700 of such shares were held in secret Account No. 100. No shares were delivered to the transfer agent of Piper for a transfer of record to Chris-Craft, or its nominee until January 30, 1969 in order to conceal further the activities of Chris-Craft from Piper and the public.

15. Although the proposed takeover of Piper and Chris-Craft's acts taken in furtherance thereof were material developments, Chris-Craft made no public announcement thereof until January 23, 1969 and instead concealed its activities, although by January 15, 1969 information about the proposed takeover had been leaked to certain brokerage firms and substantial trading and speculation in the securities of Chris-Craft was being conducted

by persons with such inside information.

16. Sometime in or about December, 1968, Chris-Craft caused a member of the conspiracy to contact the Technology Fund, Inc., an investment company as defined in Section 3 of the Investment Company Act of 1940 (the "1940 Act") and the holder of approximately 101,000 shares of approximately 6.16% of the outstanding shares of Piper common stock, and to induce Technology Fund to sell its Piper holdings to Chris-Craft. Technology Fund advised Chris-Craft it might be interested in selling its large block of Piper common stock, but only at a price substantially in excess of the then current market price for Piper common stock and not in a transaction over a national securities exchange. Thereafter on or about January 21, 1969, a representative of Technology Fund entered into secret negotiations with the defendants pursuant to which an agreement was reached on January 22, 1969, whereby Technology Fund agreed to sell and did sell its Piper shares to Chris-Craft, receiving a sales price of $65.00 per share for its Piper holdings which sales price was preferential and far in excess of the current market price of Piper common stock offered to or received by any public seller. On January 23, 1969, a written agreement between Technology Fund and Chris-Craft was entered into consummating the sale of Technology Fund's Piper holdings to Chris-Craft. As part of the same transaction, Technology Fund gave to Chris-Craft its proxy to vote the shares of Piper common stock registered in its name at the forthcoming

annual meeting of Piper shareholders. Technology Fund further agreed to purchase Chris-Craft securities as more fully described in paragraph 18 hereof. At the time Chris-Craft effected these transactions, both Chris-Craft and Technology Fund were affiliates of Piper as that term is defined in Section 2 of the 1940 Act, as Chris-Craft well knew.

17. During and as part of the above-mentioned negotiations, Technology Fund was informed of the details of Chris-Craft's scheme and plan to obtain control of Piper by means of undisclosed purchases of Piper common stock, followed by a cash tender offer to be made on or about January 23, 1969, and then concluded by a registered exchange offer of Chris-Craft securities for sufficient Piper common stock to assure domination and control of Piper by Chris-Craft.

18. As a further part of its scheme and plan to seize control of Piper, the defendants through members of their conspiracy disclosed to certain large investors Chris-Craft's program to take over Piper and requested such large investors to assist the defendants in establishing and maintaining a seemingly active market in Chris-Craft's securities over the New York Stock Exchange by purchasing large quantities of Chris-Craft's securities in small lots over a long period of time. Such investors, including Technology Fund, agreed to and did effect such purchases. As a result of these unlawful activities, the market prices of Chris-Craft's securities were artificially inflated and maintained from January 23, 1969 through August 4, 1969 and holders of Piper common

stock were induced to tender their shares to Chris-Craft and later to accept its registered exchange offer rather than resist the takeover attempt of Chris-Craft.

19. Concurrently with the aforementioned secret market purchases, the negotiations with Technology Fund for its Piper holdings and unlawful market activity in Chris-Craft's securities transacted by others at the defendants' request, Chris-Craft began preparation for the next step in its scheme and plan to seize Piper, by ordering its attorneys to draft the necessary documents to make the cash tender offer to the public shareholders of Piper pursuant to Section 14(d) of the 1934 Act.

20. On January 23, 1969, in furtherance of its scheme and plan, Chris-Craft published the announcement of its cash tender offer for up to 300,000 shares of Piper common stock at a price of $65 per share in the public press and concurrently filed with the SEC a Schedule 13-D with regard to the tender offer pursuant to Sections 13(d) and 14(d) of the 1934 Act.

21. The public announcement and the Schedule 13-D filed by Chris-Craft with the SEC contained a number of material omissions and was deliberately misleading for the purpose of concealing the scope of the scheme and design of Chris-Craft to seize control of Piper, and failed to disclose that Chris-Craft intended to and did purchase 30,900 shares of Piper common stock on the New York Stock Exchange while its tender offer was pending.

22. In furtherance of its scheme and plan to acquire Piper, between January 23, 1969 and February 3, 1969 when Chris-

Craft was soliciting tenders of the common stock of Piper, Defendant Siegel advised numerous brokers that he was unable to tell them whether Chris-Craft would purchase more than 300,000 shares of Piper common stock pursuant to its tender offer if more than that number of shares were tendered. Such statements were made for the purpose of manipulating and did manipulate and depress the market price of Piper common stock on the New York Stock Exchange to a level substantially below the tender price of $65 so that Chris-Craft could continue to purchase shares of Piper on the open market at a lower price than the tender price. By means of such manipulation Chris-Craft purchased during such period approximately 38,900 shares of Piper common stock at artificially depressed prices.

23. Chris-Craft's cash tender offer expired on February 3, 1969; Chris-Craft purchased approximately 304,600 shares of Piper common stock pursuant to such tender offer.

24. In furtherance of its takeover scheme and plan, Chris-Craft attempted to secure representation on the Piper Board of Directors by obtaining proxies for the annual meeting, originally scheduled for February 4, 1969, with a record date of January 3, 1969. As part of these efforts, on or about January 28, 1969, Chris-Craft demanded proxies from those persons who had sold it large blocks of Piper common stock in transactions occurring in January, 1969 by sending them letters containing false and misleading statements and omissions, including the false statement that Chris-Craft was entitled under the law to receive proxies therefor from the registered owners of such Piper common stock.

At the Piper annual meeting, convened on February 4, 1969, Chris-Craft presented its proxies and the meeting was adjourned until the voting was finalized. At the reconvened meeting on March 25, 1969, defendants Rochlis and Gordon were elected to the Board of Directors of Piper.

25. In and about February, 1969, in furtherance of its scheme and plan, Chris-Craft borrowed the sum of approximately $15,000,000 in one or more transactions from a bank or banks, as defined in Section 3(a) of the 1934 Act and Section 3(k) of Regulation U issued by the Board of Governors of the Federal Reserve System pursuant to Section 7(d) of the 1934 Act ("Regulation U").

26. The above-mentioned Chris-Craft loan was, to the knowledge of the bank or banks, a credit obtained for the purpose of purchasing and carrying securities listed on a national exchange, to wit Piper common stock, and said credit was a "purpose credit" as that term is defined in Regulation U. Such loan was secured directly or indirectly, as such terms are defined in Regulation U, by the shares of Piper common stock purchased. The loan so extended to Chris-Craft was greater than the maximum loan value, as set by the Supplement to Section 4 of Regulation U, of the securities constituting collateral therefor, and consequently, the loan was illegal.

27. In the next step of its scheme and plan, on or about February 27, 1969, Chris-Craft filed with the SEC a Registration Statement on Form S-1 and preliminary prospectus relating to the defendants' planned registered exchange offer of Chris-Craft securities for Piper securities and distributed such preliminary prospectus to the public.

28. Commencing on or about March 18, 1969, Chris-Craft again began to purchase Piper common stock on the open market. Such purchases continued until April 7, 1969, when the SEC ordered Chris-Craft to cease its market purchases of Piper common stock. Approximately 9,100 shares of Piper common stock were purchased by Chris-Craft during this period. In addition, during this period of time, and continuing up until on or about August 4, 1969, Chris-Craft caused certain substantial investors to purchase Piper common stock on the open market and hold such stock for the benefit of Chris-Craft and then tender or sell such stock to Chris-Craft when it was legally permissible to do so. Contemporaneously with the foregoing illegal activity, the defendants continued to induce and persuade large investors to continue to trade in Chris-Craft securities on the open market in order to create an appearance of market strength in Chris-Craft's securities as alleged in paragraph 18 above.

29. Chris-Craft's registered exchange offer became effective on May 19, 1969. The exchange offer was made to the public by means of a prospectus dated May 19, 1969 (the "May 19 prospectus"), which contained material omissions and misstatements of fact, all as set forth more fully below in paragraph 34.

30. The Chris-Craft registered exchange offer made by the May 19 prospectus as modified from time to time after the effective date, was extended through July 22, 1969. No common stock was purchased thereunder by Chris-Craft.

31. A registration statement on Form S-1 and a preliminary prospectus for the second Chris-Craft registered exchange offer was filed with the SEC on July 22, 1969 and became effective on July 24, 1969.

32. The second Chris-Craft registered exchange offer was made by means of a prospectus dated July 24, 1969 (the "July 24 prospectus") which prospectus contained material omissions and misstatements of fact, as more fully set forth in paragraph 32 below.

33. The Chris-Craft registered exchange offer made by the July 24 prospectus remained open through August 4, 1969.

Chris-Craft purchased approximately 112,000 shares of Piper common stock thereunder.

34. Chris-Craft's May 19 and July 24 prospectuses, as well as the preliminary prospectuses circulated to the public with regard to such registered exchange offers for Piper common stock, contained the following material omissions and misstatements of fact, among others:

A) The prospectuses did not disclose defendants' scheme and plan concocted in the fall of 1968 to seize control of Piper, of which the registered exchange offers for Piper common stock were a necessary and integral part.

B) The prospectuses falsely stated the defendants had no present plans to change the management of Piper, whereas the defendants did in fact have definite plans for a change of management and a reorientation of Piper's business and assets, which plans were the motive for the take-over attempt.

C) The prospectuses did not disclose that all Chris-Craft's purchases of Piper common stock since December 30, 1968, were illegal, thus making all such acquisitions subject to divestment.

D) The prospectuses did not disclose that for a period of time commencing on January 23, 1969 and continuing during the pendency of Chris-Craft's exchange offers,

defendants caused the market price of Chris-Craft's securities to be improperly influenced and affected by others at the request of Chris-Craft.

E) The prospectuses did not disclose that Chris-Craft's purchases of Piper common stock were made with funds obtained by an illegal bank loan and the improper use of the proceeds of the sale of its convertible debentures in December, 1968.

F) The prospectuses misrepresented the true cost of the previous purchases of Piper common stock by Chris-Craft by misstating the true application of the proceeds of the Chris-Craft convertible debenture offering and the $15,000,000 bank loan to such purchases, thereby also distorting the pro forma figures on share dilution contained in the prospectuses.

G) The prospectuses did not disclose the SEC's order to Chris-Craft in April, 1969 to cease its purchases of Piper common stock on the open market.

H) The prospectuses did not disclose that, of the dollar amount attributed by Chris-Craft to the purchase of Piper common stock prior to the registered exchange offers, approximately $50,000 was paid to a broker or other person or persons unknown, in violation of the rules of the SEC and the New York Stock Exchange.

I) The prospectuses did not disclose any of the other violations of law herein set forth.

All of the above misstatements and omissions were material an were known by the defendants to be material, and were made in order to further the scheme and plan of the defendants to take-over control of Piper.

35. By reason of the facts set forth hereinabove, the defendants have violated the following securities laws:

A) Sections 12 and 17 of the 1933 Act,

B) Section 7(d) of the 1934 Act and Regulation U issued by the Board of Governors of the Federal Reserve Board thereunder.

C) Section 9(a) of the 1934 Act,

D) Section 10b of the 1934 Act and Rules 10b-5 and 10b-6 thereunder.

E) Sections 13(d) and 14(d) of the 1934 Act,

F) Section 17 of the 1940 Act.

36. By reason of the facts set forth hereinabove, the defendants have also violated the fiduciary duties and responsibilities they owe to Piper and the Piper stockholders.

37. By means of the fraudulent and illegal acts set forth above, Chris-Craft has acquired approximately 697,500 shares or 42.48% of the outstanding Piper common stock.

38. By means of negotiated transactions with the Piper family and other holders of large blocks of Piper stock, by a registered voluntary exchange offer and by market purchases made after the completion of its exchange offer, Bangor Punta was able to acquire and now owns 835,750 shares or 50.97% of the outstanding Piper stock.

39. The fraudulent and illegal acts of the defendants have greatly increased the cost of Bangor Punta of the acquisition of such shares of Piper stock.

40. But for the fraudulent and illegal acts of the defendants, Bangor Punta would have been able to acquire by the present time substantially all of the outstanding stock of Piper.

41. By reason of the violations of law and the fraudulent practices described herein, Chris-Craft has damaged Bangor Punta in the amount of at least $50,000,000, and its acquisition and continued ownership of the approximately 697,500 Piper shares it has acquired by means of such violations and fraudulent practices has constituted and will constitute an irreparable injury to Bangor Punta.

WHEREFORE, plaintiff demands judgment:

(1) Requiring Chris-Craft to pay compensatory damages to plaintiff in the amount of $50,000,000;

(2) Requiring Chris-Craft to divest itself of all shares of Piper:

(a) acquired in violation of Sections 12 and 17 of the 1933 Act;

(b) acquired in violation of Section 10(b) of the 1934 Act and Rule 10b-5 thereunder;

(c) acquired in violation of Section 10(b) of the 1934 Act and Rule 10b-6 thereunder;

(d) acquired in violation of Sections 13(d) and 14(d) of the 1934 Act;

(e) acquired in violation of Section 17 of the 1940 Act;

(f) purchased with the proceeds of the sale of its convertible subordinate debentures;

(g) purchased with the proceeds of the illegal bank loan; or

(h) purchased or otherwise acquired by Chris-Craft in transactions involving Chris-Craft's securities whose price was artificially maintained by Chris-Craft or by others or by Chris-Craft's request;

(3) Enjoining Chris-Craft during the pendency of this action and until completion of the divestiture demanded in paragraph (2) directly above, from voting, asserting the right to vote or exercising any other incidents of ownerships of all shares of Piper common stock illegally acquired;

(4) Granting plaintiff its costs and disbursements together with reasonable counsel fees;

(5) Granting such other and further relief as to the Court may seem just and proper.

Dated: New York, New York

January 26, 1970

WEBSTER SHEFFIELD FLEISCHMANN
HITCHCOCK & BROOKFIELD

By _____

Attorneys for Plaintiff
Rangor Punta Corporation
1 Rockefeller Plaza
New York, New York 10020
Tel. No. 582-3370

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

D Filed (ca) 3/6/72
Dism 3/14/72

BANGOR PUNTA CORPORATION,

Plaintiff,

-against-

CHRIS-CRAFT INDUSTRIES, INC., et al.,

Defendants.

ANSWER

69 Civ. 2354 MP

Defendant Chris-Craft Industries, Inc. ("Chris-Craft"), by its attorneys, for its answer to plaintiff's first amended complaint:

1. Denies that it has knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in Paragraph 1 of the complaint, except admits that in said paragraph plaintiff purports to base jurisdiction of this Court on certain provisions of federal law and upon the principle of pendent jurisdiction and alleges that the amount of controversy exceeds $10,000 exclusive of costs.

2. Denies that it has knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in Paragraph 2 of the complaint, except admits that certain of plaintiff's securities are listed and traded on the New York Stock Exchange ("NYSE") and on the American Stock Exchange.

3. Denies each and every allegation contained in Paragraph 3 of the complaint, except admits that Chris-Craft is a Delaware corporation with its principal executive office at 600 Madison Avenue, New York, N.Y., and that certain of Chris-Craft's securities are listed and traded on the NYSE and on the Pacific Stock Exchange.

4. Denies each and every allegation contained in Paragraph 4 of the complaint, except admits that defendant Herbert J. Siegel is and at all times relevant was President, chief executive officer and a director of Chris-Craft and that the other individual defendants named in the complaint are and were directors, and in some instances, also officers of Chris-Craft.

5. Admits, on information and belief, the allegations contained in Paragrapns 5, 6 and 7 of the complaint.

6. Denies that it has knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in Paragraph 8 of the complaint, except admits that on or about December 30, 1968 the Piper Aircraft Corporation ("Piper") proxy statement dated December 20, 1968 stated that there were issued and outstanding approximately 1,641,190 shares of Piper common stock of which only 325,422 shares were reported to be owned beneficially, or as of record, by the late William T. Piper, Sr., members of his family and certain organizations controlled by them (collectively referred to as the "Piper family"). To the extent that the Piper family owned beneficially or as of record a greater number of Piper shares, that fact was not disclosed

in proxy statements issued by the management of Piper or in reports filed with the Securities and Exchange Commission ("SEC") by members of the Piper family pursuant to the requirements of Section 16(a) of the Securities Exchange Act of 1934, and was concealed from the public. Chris-Craft further admits that at or about December 30, 1968 the principal officers and directors of Piper were members of the Piper family and that the shares of Piper stock not owned by the Piper family were held by the public.

7. Denies each and every allegation contained in Paragraph 9 of the complaint, except admits that Chris-Craft is a diversified manufacturer with interests in boats, television, industrial and agricultural chemicals and in the manufacture of fiber and foam products, and that its sales in 1968 were in excess of $90 million.

8. Denies each and every allegation contained in Paragraphs 10, 12, 13, 15, 17, 18, 19, 21, 22, 26, 32, 34, 35, 36, 37, 39, 40 and 41 of the complaint.

9. Denies each and every allegation contained in Paragraph 11 of the complaint, except admits that during October 1968 Chris-Craft filed its registration statement for its proposed offer to sell a maximum of $26 million, pursuant to which it sold $21,223,200, principal amount of 6% convertible subordinated debentures and refers to such registration statement for its terms.

10. Denies each and every allegation contained in

Paragraph 14 of the complaint, except admits that from December 30, 1968 to January 23, 1969 Chris-Craft purchased shares of Piper common stock through a member in good standing of the NYSE, which member in accordance with its own practices and not at the suggestion of Chris-Craft assigned Account No. 100 to such account. In further answer, Chris-Craft alleges that substantially less than 98,600 shares of Piper common stock, and less than 5% of the outstanding shares of Piper stock, had been delivered to Chris-Craft's custody or control by January 22, 1969.

11. Denies each and every allegation contained in Paragraph 16 of the complaint, except admits that on or about January 23, 1969, pursuant to a written agreement, Chris-Craft purchased 101,000 shares of Piper stock from Technology Fund, Inc., an investment company, at $65 per Piper share, the same price at which Chris-Craft immediately thereafter made a public tender offer to the shareholders of Piper, and that Technology Fund gave Chris-Craft its proxy to vote the shares of Piper common stock when it sold and delivered those shares to Chris-Craft.

12. Denies each and every allegation contained in Paragraph 20 of the complaint, except admits that on January 23, 1969 Chris-Craft published the announcement of its cash tender offer for up to 300,000 shares of Piper common stock with the right to purchase additional shares at $65 a share, and that it filed a Schedule 13-D with the SEC on the same date, and refers to said announcement and schedule for the terms thereof.

13. In answer to Paragraph 23 of the complaint, Chris-Craft alleges that its cash tender offer expired on February 3, 1969 and that 304,606 shares of Piper common stock were tendered to Chris-Craft and purchased by it pursuant to such tender offer.

14. Denies each and every allegation contained in Paragraph 24 of the complaint, except admits that at the Piper annual meeting convened on February 4, 1969 Chris-Craft presented its proxies, that the meeting was adjourned until the appointed judges of election finalized the vote and that when the meeting reconvened on March 25, 1969 defendants James J. Rochlis and C. Leonard Gordon were elected to the Board of Directors of Piper.

15. Denies each and every allegation contained in Paragraph 25 of the complaint, except admits that in February 1969 Chris-Craft borrowed $15 million from a bank under a demand note.

16. Denies each and every allegation contained in Paragraph 27 of the complaint, except admits that on or about February 27, 1969 Chris-Craft filed its registration statement and preliminary prospectus with the SEC for its registered exchange offer of Chris-Craft securities for shares of Piper stock.

17. Denies each and every allegation contained in Paragraph 28 of the complaint, except admits that between March 18, 1969 and April 7, 1969 Chris-Craft purchased 9,100

shares of Piper common stock on the open market, and on April 7, 1969 members of the staff of the SEC told Chris-Craft that neither it nor the management of Piper nor any third party acting with or for Piper were permitted to make any further direct or indirect purchases of Piper stock during the pendency of Chris-Craft's exchange offer.

18. Denies each and every allegation contained in Paragraph 29 of the complaint, except admits that Chris-Craft's registered exchange offer became effective on May 19, 1969 and was made to the public by a prospectus dated May 19, 1969.

19. Admits the allegations contained in Paragraphs 30 and 31 of the complaint.

20. Admits the allegations contained in Paragraph 33 of the complaint, except alleges that Chris-Craft purchased 112,089 shares of Piper common stock pursuant to its registered exchange offer made by the July 24, 1969 prospectus.

FIRST AFFIRMATIVE DEFENSE

21. On information and belief, Bangor Punta did not become a shareholder of Piper or enter into any contracts for the purchase of any shares of Piper until May 8, 1969.

22. Paragraphs 1 through 28 of Bangor Punta's first amended complaint refer to and complain of events alleged to have occurred prior to May 8, 1969.

23. By reason of the foregoing, Bangor Punta does not have standing to complain of any acts or transactions

which took place prior to the time it became a shareholder of Piper.

SECOND AFFIRMATIVE DEFENCE

24. Bangor Punta's first amended complaint alleges claims which arise out of the same transactions and occurrences that are the subject matter of the action commenced by Chris-Craft against Bangor Punta and others in this Court on May 22, 1969 (69 Civ. 2227).

25. By reason of the foregoing, Bangor Punta was required to set forth its claims against Chris-Craft as counterclaims in the aforesaid action commenced by Chris-Craft.

26. Chris-Craft hereby incorporates as an affirmative defense to this action all the allegations of its amended complaint in 69 Civ. 2227 and all allegations that may hereafter be made by it in amended or supplemental pleadings filed in such action.

Dated: New York, N.Y.
March 6, 1970

PAUL, WEISS, GOLDBERG, RIFKIND,
WHARTON & GARRISON

By _____

Attorneys for Defendant Chris-Craft Industries, Inc.
Office and P. O. Address
345 Park Avenue
New York, N.Y. 10022

(212) 935-3000

Rec'd 5/1/75

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

BANGOR PUNTA CORPORATION, :

Plaintiff, :

-against- :

CHRIS-CRAFT INDUSTRIES, INC., et al., :

Defendants. :

- -x

ANSWER

69 Civ. 2354 MP

Defendants Loeb, Rhoades & Co. and Shields & Co. Inc., by their attorneys, Cahill, Gordon, Sonnett, Reindel & Ohl, answering the first amended complaint herein:

1. Deny knowledge or information sufficient to form a belief as to the truth of any allegations contained in Paragraph 1 of the complaint, except admit that in said paragraph plaintiff purports to base jurisdiction of this Court on certain provisions of federal law and upon the principle of pendent jurisdiction and alleges that the amount of controversy exceeds $10,000 exclusive of costs.

2. Deny knowledge or information sufficient to form a belief as to the truth of any allegation contained in Paragraph 2 of the complaint, except admit that certain of plaintiff's securities are listed and traded on the New York Stock Exchange and on the American Stock Exchange.

3. Deny each and every allegation contained in Paragraph 3 of the complaint except admit that Chris-Craft is a

Delaware corporation with its principal executive office at 600 Madison Avenue, New York, New York, and that certain of Chris-Craft's securities are listed and traded on the New York Stock Exchange and on the Pacific Stock Exchange.

4. Deny each and every allegation contained in Paragraph 4 of the complaint except admit that the defendant Herbert J. Siegel is and at all times relevant was President, chief executive officer and a director of Chris-Craft and that the other individual defendants named in the complaint are and were directors, and, in some instances, also officers of Chris-Craft.

5. Admit, on information and belief, the allegations contained in Paragraphs 7 and 33 of the complaint.

6. Deny knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in Paragraphs 8, 14 and 38 of the complaint.

7. Deny each and every allegation contained in Paragraph 9 of the complaint, except admit that Chris-Craft is a diversified manufacturer with interests in boats, television, industrial and agricultural chemicals and in the manufacture of fiber and foam products, and that its sales in 1968 were in excess of $90 million.

8. Deny each and every allegation contained in Paragraphs 10, 12, 13, 18, 19, 32, 34, 35, 36, 37, 39, 40 and 41 of the complaint.

9. Deny each and every allegation contained in Paragraph 11 of the complaint, except admit that during October 1968

Chris-Craft filed its registration statement for its proposed offer to sell a maximum of $26 million, pursuant to which it sold $21,223,200, principal amount of 6% convertible subordinated debentures and refer to such registration statement for its terms.

10. Deny knowledge or information sufficient to form a belief as to any of the allegations contained in Paragraphs 16 and 17 of the complaint, except admit, on information and belief, that on or about January 23, 1969 Chris-Craft purchased 101,000 shares of Piper stock at $65 per Piper share.

11. Deny, on information and belief, each and every allegation contained in Paragraphs 15, 21, 22 and 26 of the complaint.

12. Deny each and every allegation contained in Paragraph 20 of the complaint, except admit, on information and belief, that on January 23, 1969 Chris-Craft published the announcement of its cash tender offer for up to 300,000 shares of Piper Common Stock with the right to purchase additional shares at $65 a share, and that it filed a Schedule 13-D with the SEC on the same date, and refer to said announcement and schedule for the terms thereof.

13. In answer to Paragraph 23 of the complaint, the defendants admit that Chris-Craft's cash tender offer expired on February 3, 1969 and allege that 304,606 shares of Piper Common Stock were tendered to Chris-Craft and purchased by it pursuant to such tender offer.

14. Deny, on information and belief, each and every allegation contained in Paragraph 24 of the complaint, except admit that at the Piper annual meeting convened on February 4, 1969 Chris-Craft presented its proxies, that the meeting was adjourned until the appointed judges of election finalized the vote and that when the meeting reconvened on March 25, 1969 defendants James J. Rochlis and C. Leonard Gordon were elected to the Board of Directors of Piper.

15. Deny, on information and belief, each and every allegation contained in Paragraph 25 of the complaint, except admit that in February 1969 Chris-Craft borrowed $15 million from a bank under a demand note.

16. Deny each and every allegation contained in Paragraph 27 of the complaint, except admit that on or about February 27, 1969 Chris-Craft filed its registration statement and preliminary prospectus with the SEC for its registered exchange offer of Chris-Craft securities for shares of Piper stock.

17. Deny each and every allegation contained in Paragraph 28 of the complaint, except admit, on information and belief, that Chris-Craft purchased shares of Piper Common Stock on the open market, and on April 7, 1969 members of the staff of the SEC told Chris-Craft that neither it nor the management of Piper nor any third-party acting with or for Piper were permitted to make any further direct or indirect purchases of Piper stock during the pendency of Chris-Craft's exchange offer.

18. Deny each and every allegation contained in Paragraph 29 of the complaint, except admit that Chris-Craft's registered exchange offer became effective on May 19, 1969 and was made to the public by a prospectus dated May 19, 1969.

FIRST AFFIRMATIVE DEFENSE

19. The complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

20. On information and belief, Bangor Punta did not become a shareholder of Piper or enter into any contracts for the purchase of any shares of Piper until May 8, 1969.

21. Paragraphs 1 through 28 of Bangor Punta's first amended complaint refer to and complain of events alleged to have occurred prior to May 8, 1969.

22. By reason of the foregoing, Bangor Punta does not have standing to complain of any acts or transactions which took place prior to the time it became a shareholder of Piper.

THIRD AFFIRMATIVE DEFENSE

23. As to statements made in any registration statements or prospectuses referred to in the first amended complaint, the defendants, after reasonable investigation, had reasonable ground

to believe and did believe at the time said registration statements and prospectuses became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

Dated: New York, New York
April 27, 1970

CAHILL, GORDON, SONNETT, REINDEL & OHL

By _____
A Member of the Firm
Attorneys for Defendants
Loeb, Rhoades & Co. and Shields & Co.
Office & P.O. Address:
80 Pine Street
New York, New York 10005
944-7400

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	
v.	:	70 Civ._____
BANGOR PUNTA CORPORATION,	:	COMPLAINT
Defendant.	:	

Plaintiff, the Securities and Exchange Commission ("the Commission"), for its complaint, alleges upon information and belief:

1. Defendant Bangor Punta Corporation ("Bangor Punta") has engaged and is reasonably likely to engage again in acts and practices which have constituted and will constitute violations of sections 7, 10(a) and 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. 77g, 77j(a) and 77q(a), as well as section 10(b) of the Securities Exchange Act of 1934 ("Securities Exchange Act"), 15 U.S.C. 78j(b), and Rule 10b-5 thereunder, 17 CFR 240.10b-5.

2. The Commission is authorized to bring this action pursuant to section 20(b) of the Securities Act, 15 U.S.C. 77t(b), and section 21(e) of the Securities Exchange Act, 15 U.S.C. 78u(e). The jurisdiction of this Court is based upon section 22(a) of the Securities Act, 15 U.S.C. 77v(a), and section 27 of the Securities Exchange Act, 15 U.S.C. 78aa.

3. Defendant Bangor Punta, a corporation organized under the laws of the State of Delaware, transacts business within the Southern District of New York.

4. The acts and practices, or some of them, constituting the violations of law complained of took place within the Southern District of New York.

5. The defendant Bangor Punta, directly and indirectly, made use of the mails and of the means or instruments of interstate commerce in connection with the acts and practices alleged herein.

6. On or about May 29, 1969, defendant Bangor Punta filed with the Commission a registration statement (including a prospectus) for a public offering of securities in connection with a proposed exchange offer for the common stock of Piper Aricraft Corporation ("Piper"). Said registration statement became effective on July 18, 1969, and Bangor Punta then caused prospectuses to be disseminated to all Piper shareholders.

7. Bangor Punta, through its exchange offer of July 1969, obtained 111,628 shares of Piper, or about 7% of the 1,644,790 shares of Piper common stock outstanding. Together with other acquisitions of Piper shares, Bangor Punta was able to obtain about 51% of the shares of common stock of Piper, while Chris-Craft Corporation, Bangor Punta's chief competitor for Piper since early 1969, acquired about 42% of Piper's common stock.

8. Bangor Punta's registration statement in connection with its exchange offer for Piper shares, and the prospectus included in the registration statement, discussed at considerable length the company's 98.7% owned subsidiary, the Bangor and Aroostook Railroad ("Railroad").

9. Bangor Punta's aforesaid registration statement and prospectus were materially deficient because they omitted to disclose the relevant facts concerning: (a) the company's firm general decision to sell the Railroad at a substantial loss over its carrying value on the books and financial statements of Bangor Punta; and (b) the company's specific decision to sell the Railroad to Amoskeag Company ("Amoskeag") at a $14,000,000 loss over the carrying value of the Railroad on Bangor Punta's financial statements.

10. When the Railroad sale to Amoskeag was formally concluded on October 2, 1969, the sales price of $5,000,000 resulted in an extraordinary loss of approximately $14,000,000, based on the carrying value of the

Railroad on Bangor Punta's financial statements. The amount of this $14,000,000 loss far exceeded Bangor Punta's consolidated net income (before extraordinary items) of some $6,000,000 for the fiscal year ended September 30, 1969.

11. Bangor Punta filed said registration statement and prospectus for the exchange offer on May 29, 1969. During the two months preceding the filing these developments had occurred in regard to the sale of the Railroad:

(a) The board of directors of Bangor Punta had decided to dispose of the Railroad and had appointed a special committee of three of its members to study the alternatives. The basic reason for disposing of the Railroad was that in order to break even, it would require a heavy infusion of capital by Bangor Punta--perhaps as much as $5,000,000 over the next five years. In addition, the Railroad's earnings had been steadily deteriorating during the past three years.

(b) The special committee had decided upon sale of the Railroad as the only feasible alternative, and had obtained a tentative offer of $5,000,000 for its capital stock from Amoskeag, the only party known to have an interest in making the purchase.

(c) The Bangor Punta board of directors, after being informed of Amoskeag's tentative offer, authorized the chairman of the special committee, Curtis H. Hutchins:

(i) to negotiate with Amoskeag for its purchase of the capital stock of the Railroad for a total sum of $7,000,000, 51% to be purchased for some $3,250,000 and the remaining 49% to be optioned to Amoskeag at a higher price; and

(ii) to negotiate with Amoskeag for its purchase of 100% of the Railroad subject to further investigation

of the accounting and tax ramifications of such a transaction and approval by the board of directors or the executive committee of the board.

(d) Hutchins, with the board's authorization in hand, communicated the $7,000,000 counter offer to Amoskeag, which flatly rejected it (as Hutchins had predicted to the Bangor Punta board). Hutchins then arrived at a written understanding with Amoskeag, subject to approval of the Bangor Punta board. The understanding, dated and hand delivered on May 27, 1969, called for the sale of all of the Railroad stock to Amoskeag for $5,000,000 (either in cash or in Bangor Punta securities held by Amoskeag, at Bangor Punta's option).

12. Two days after Hutchins' written understanding with Amoskeag, Bangor Punta filed with the Commission said registration statement and prospectus for the exchange offer. More than seven weeks elapsed between the filing of the registration statement and its effective date on July 18, 1969. During this period, the Bangor Punta board took no formal action with regard to the sale of the Railroad. Instead, Hutchins, on July 16, 1969, telephoned the president of Amoskeag--F. C. Dumaine, Jr.--and asked him to delay consummation of the Railroad sale in order to avoid disclosure of the transaction in Bangor Punta's pending registration statement. Dumaine prepared a memorandum to his files recording the substance of the conversation:

> "Curtis Hutchins said we definitely have a deal - they are in registration - he hopes to be out of registration in ten days - of course, that is questionable. He was informed by his lawyers that a definite commitment should not be made within two months of registration. We agreed that in the meantime I should go over the railroad with whomever I want to see the overall condition of the property and to meet the staff so that I will be prepared to select a staff on consummation date, if and when we have a consummation date."

13. In August 1969, prior to the time when Bangor Punta's board of directors formally approved the sale of the Railroad to Amoskeag for $5,000,000, John M. Coward presented an offer to Bangor Punta to buy

the stock of the Railroad for $10,000,000 (payable $4,000,000 at closing and $1,000,000 per year for six years, with Bangor Punta to hold the stock as collateral and to collect interest at the prime rate on the unpaid balance). Bangor Punta rejected this offer because of its commitment to Amoskeag.

14. In September 1969, the Bangor Punta board of directors approved the $5,000,000 sale of the Railroad stock to Amoskeag. The formal agreement dated October 2, 1969, embodied the essential terms of Bangor Punta's written understanding with Amoskeag of May 27, 1969 (¶11(d), supra).

15. The Railroad sale and the resultant loss to Bangor Punta were material facts in the following respects, among others:

(a) Large amount of loss and impact upon income. In Bangor Punta's financial statements for the fiscal year ended September 30, 1969, the $14,000,000 loss on sale of the Railroad was deducted from earnings as an extraordinary loss item. Consolidated net income (after taxes) for that fiscal year, by way of contrast, was only about $6,000,000 (before the loss on sale of the Railroad), and for the six month period ended March 31, 1969, was $5,032,000. (The consolidated net income, after taxes, for prior fiscal years was: 1968--$8,244,000; 1967--$5,571,000; 1966--$5,569,000; 1965--$5,578,000; and 1964--$3,749,000.) Bangor Punta's net loss for the fiscal year ended September 30, 1969, was about $8,600,000.

(b) Impact upon retained earnings and stockholders' equity. The $14,000,000 loss comprised about 36% of Bangor Punta's retained earnings of some $38,000,000 as of the fiscal year beginning October 1, 1968, and also amounted to about 11% of stockholders' equity as of the same date.

(c) Impact upon market price. Immediately following both the announcement of sale of the Railroad, on October 3, 1969, and the release on December 2, 1969, of Bangor Punta's financial statements for fiscal 1969, Bangor Punta's common stock declined steadily on the New York Stock Exchange

for at least a week (with one day's exception each period). During the period beginning October 3, 1969, through October 10, 1969, the market price for the common stock of Bangor Punta Corp. declined 4.6%. For the week beginning December 3 through the 10th, Bangor Punta common stock declined 13.6%.

(d) Bangor Punta's contemporaneous opinion of the materiality of the Railroad sale. Bangor Punta not only treated the Railroad at length on a going-concern basis in its registration statement but also assiduously strove to delay consummation of the Railroad sale until after conclusion of the exchange offer.

16. Defendant Bangor Punta violated section 17(a) of the Securities Act, 15 U.S.C. 77q(a), section 10(b) of the Securities Exchange Act, 15 U.S.C. 78j(b), and Rule 10b-5 thereunder, 17 CFR 240.10b-5, by failing to disclose in its registration statement and prospectus facts concerning the disposition of the Railroad. Said omissions rendered materially misleading statements which were made concerning the business and financial condition of Bangor Punta.

17. Defendant Bangor Punta violated sections 7 and 10(a) of the Securities Act, 15 U.S.C. 77g and 77j(a), by reason of the failure of its registration statement and prospectus to disclose the company's intended cessation of its Railroad business and the consequences flowing therefrom.

18. Defendant Bangor Punta will, unless restrained and enjoined, continue to engage in the acts and practices set forth in this complaint and in acts and practices of similar purport. In fact, defendant Bangor Punta has demonstrated a propensity for violating the securities laws. The registration statement which is the subject of this action was filed by Bangor Punta pursuant to a permanent injunction obtained by the Commission against "gun jumping" violations by that company and Piper involving the registration provisions of the Securities Act, 15 U.S.C. 77e(c). Securities and Exchange Commission v. Bangor Punta Corporation

and Piper Aricraft Corporation, Civil Action No. 1388-68 (D.D.C. 1969). The injunction, entered on May 26, 1969, upon consent of the defendants without admission of the allegations in the complaint, ordered Bangor Punta to file within 10 days a registration statement for the exchange offer for Piper shares or else discontinue the offering. The injunction, in relevant part, further ordered Bangor Punta not to "announce or implement any exchange offer unless and until such announcement of said exchange offer and the exchange offer comply with the registration provisions of the Federal securities laws." The court injunction notwithstanding, Bangor Punta proceeded to file a registration statement which failed in material respects to make the adequate disclosure required by the registration provisions of the securities laws. Moreover, as has been previously alleged (¶¶8, 11, 12), Bangor Punta's failure to disclose was made in a context which establishes unequivocally that the company itself regarded the omitted information to be material.

WHEREPORE Plaintiff demands judgment:

1. Enjoining the defendant Bangor Punta from further acts and practices in violation of section 7 of the Securities Act, 15 U.S.C. 77g, and the rules and regulations thereunder; section 10(a) of the Securities Act, 15 U.S.C. 77j, and the rules and regulations thereunder; section 17(a) of the Securities Act, 15 U.S.C. 77q(a); and section 10(b) of the Securities Exchange Act, 15 U.S.C. 78j(b), and Rule 10b-5 thereunder, 17 CFR 240.10b-5.

2. Ordering the defendant Bangor Punta to make an offer of rescission to all shareholders who exchanged shares of the common stock of Piper with Bangor Punta pursuant to the exchange offer of July 1969.

3. Awarding such other and further relief as the Court may deem just and proper.

Respectfully submitted,

PHILIP A. LOOMIS, JR.
General Counsel

DAVID FERBER
Solicitor

ROBERT E. KUSHNER
Assistant General Counsel

JAMES J. SEXTON
Attorney

Securities and Exchange Commission
Washington, D.C. 20549

Kevin Thomas Duffy
Regional Administrator

Securities and Exchange Commission
New York Regional Office
26 Federal Plaza
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, : 70 Civ. 3490:MP

-against- :

BANGOR PUNTA CORPORATION, : ANSWER

Defendant. :

- -x

The defendant, Bangor Punta Corporation ("Bangor Punta"), by its attorneys, Webster Sheffield Fleischmann Hitchcock & Brookfield, for its answer to the complaint herein alleges as follows:

FIRST: Denies each and every allegation contained in paragraphs "1" and "2" of the complaint.

SECOND: Denies each and every allegation contained in paragraph "3" of the complaint except Bangor Punta admits it is a corporation organized under the laws of the State of Delaware.

THIRD: Denies each and every allegation contained in paragraphs "4" and "5" of the complaint.

FOURTH: Denies each and every allegation contained in paragraph "7" of the complaint and affirmatively alleges that

Bangor Punta acquired (a) 612,718 shares of Piper Aircraft Corporation ("Piper") common stock pursuant to the registered exchange offers it made to members of the Piper family and to all other holders of Piper common stock between July 18, 1969 and July 29, 1969; (b) 120,200 shares of Piper common stock purchased for cash in five unsolicited transactions off any registered stock exchange between May 14 and May 23, 1969; and (c) 100,614 shares of Piper common stock purchased on the open market subsequent to August 8, 1969. Bangor Punta now owns of record a total of approximately 838,156 shares of Piper common stock of approximately fifty and seven-tenths of one percent (50.7%) of all the outstanding shares of Piper common stock. Further Bangor Punta has continued to purchase shares of Piper common stock on the open market from time to time. While Chris-Craft Industries, Inc. ("Chris-Craft") purports to own approximately 697,495 shares of Piper common stock, Bangor Punta claims Chris-Craft acquired such Piper shares in flagrant violation of the securities laws and is seeking appropriate relief against Chris-Craft in actions now pending in this Court.

FIFTH: Denies each and every allegation contained in paragraph "8" of the complaint and respectfully refers the Court to the registration statement and prospectus of Bangor Punta relating to the exchange offer for the contents thereof.

SIXTH: Denies each and every allegation contained in paragraph "9" of the complaint.

SEVENTH: Denies each and every allegation contained in paragraph "10" of the complaint and affirmatively alleges that on October 2, 1969, Bangor Punta sold all of the shares of capital stock of the Bangor & Aroostook Railroad Company ("BAR") owned by it to Amoskeag Corporation for $5,000,000 in cash, plus additional valuable cash considerations payable to Bangor Punta depending upon the occurrence of certain events in the future. For accounting purposes only (not cash purposes), Bangor Punta incurred an extraordinary loss of $13,813,289 before any consideration is given to the receipt of additional cash payments that may be received from Amoskeag Corporation under the terms of the sale.

EIGHTH: Denies each and every allegation contained in paragraph "11" of the complaint and affirmatively alleges that Bangor Punta filed a registration statement including a prospectus with the plaintiff for its exchange offers to the Piper family and all other holders of Piper common stock on May 29, 1969.

NINTH: Denies each and every allegation contained in paragraphs "12" and "13" of the complaint.

TENTH: Denies each and every allegation contained in paragraph "14" of the complaint and respectfully refers the Court to the several agreements dated October 2, 1969 between Bangor Punta and Amoskeag Corporation concerning the sale of the stock interests of Bangor Punta in the BAR to Amoskeag Corporation for the terms thereof.

ELEVENTH: Denies each and every allegation contained in paragraph "15" of the complaint and affirmatively alleges (a) that Bangor Punta incurred an extraordinary loss for accounting purposes (not cash loss) on October 2, 1969, of $13,813,289 as a result of its disposition of its stock interest in the BAR which had no impact or effect on Bangor Punta's earnings from its operations; (b) the extraordinary loss incurred had the effect of eliminating from the "retained earnings" item on the Bangor Punta balance sheet the extraordinary gain of $10,288,629 realized by Bangor Punta on September 30, 1965 when this investment of Bangor Punta in the BAR was increased on the balance sheet of Bangor Punta from $8,096,179 to $18,384,808 based on an appraisal of the then market value of the BAR shares. The foregoing information was fully disclosed to the public in the Bangor Punta and BAR financials incorporated in the prospectus for the exchange offer; (c) in fiscal 1968, the earnings of the BAR constituted less than one percent (1%) of the net earnings of Bangor Punta; and (d) on October 9, 1969, Bangor Punta common stock closed on the New York Stock Exchange at $21 per share and between such date and October 10, 1969, Bangor Punta common stock closed between 21 3/8 and 20 4/8; and that between October 11 and October 21, 1969, after the news of the sale of the BAR by Bangor Punta had been fully assimilated by the investment community, Bangor Punta common stock closed between 23 and 24 7/8, for an increase in value of the common stock of Bangor Punta of almost twenty percent (20%).

Beginning in early 1969 and continuing throughout 1969, it is common knowledge that the prices of common stocks generally declined markedly as a result of a number of factors including by December, 1969, tax selling. Although Bangor Punta common stock closed at 18 3/8 on December 3, 1969 and at 15 7/8 on December 10, 1969 and remained in the $15 range through December, 1969, by January 5, 1970, Bangor Punta common stock again closed at 18 5/8.

TWELFTH: Denies each and every allegation contained in paragraphs "16", "17" and "18" of the complaint.

AS AND FOR A FIRST COMPLETE AFFIRMATIVE DEFENSE

THIRTEENTH: The complaint herein is sham and false because there is no good ground to support the allegations of the complaint within the meaning of F.R.C.P. Rule 11. If Bangor Punta can establish that this action was commenced by the plaintiff without good cause, Bangor Punta may be entitled to be reimbursed for all its counsel fees and other direct and indirect expenses incurred in defending itself.

AS AND FOR A SECOND COMPLETE AFFIRMATIVE DEFENSE

FOURTEENTH: Upon information and belief, since May, 1969, the administrative staff of the plaintiff has been engaged in a course of conduct, the intended result of which is to interfere on behalf of Chris-Craft in the corporate struggle for control

of Piper that has been going on between Bangor Punta and Chris-Craft since May, 1969. These wrongful activities of the administrative staff of the plaintiff may have been prompted by, or be the result of their own internal confusion and error. As a result of such internal confusion and error the administrative staff may believe they have afforded inequitable treatment to Chris-Craft in its fight for control of Piper in the spring of 1969, and are attempting to correct the effects of their actions by attempting unjustly to make Bangor Punta suffer for the administrative staff's own failures. If such improper motives are established from evidence developed in discovery proceedings herein, in addition to constituting the equitable defense of "unclean hands" on the part of the plaintiff, Bangor Punta may be entitled to affirmative injunctive relief against continued interference by the administrative staff of plaintiff with the affairs of Bangor Punta.

WHEREFORE Bangor Punta demands that the complaint herein be dismissed with prejudice, that it be awarded a judgment against the plaintiff for its counsel fees and all other direct and indirect expenses including costs and disbursements incurred by it in defending this action, and for such other and further relief as this Court deems proper in the premises.

Dated: New York, New York
October 14, 1970

WEBSTER SHEFFIELD FLEISCHMANN
HITCHCOCK & BROOKFIELD

By _____
Attorneys for Defendant

The following pages 208 A to 757 A are the agreed findings of fact stipulated to by the parties in Chris-Craft v. Bangor Punta, docket No. 72-1064. Chris-Craft's agreed findings were submitted to the trial court as Exhibits 73A and 73B. Bangor Punta's agreed findings were submitted to the trial court as Exhibit AF. Piper's agreed findings were submitted to the trial court as Exhibits R and S. First Boston's agreed findings were submitted to the trial court court as Exhibit AE:(1)-(3). For the convenience of this Court the findings of the various parties are set out here in numerical order.

1. [Proposed by Chris-Craft] Chris-Craft Industries, Inc. ("Chris-Craft") is a publicly held Delaware corporation with its principal executive offices in the City, County and State of New York. Chris-Craft's common and preferred stocks and convertible debentures are traded on the New York Stock Exchange ("NYSE"). The Appendix attached hereto ("Appendix") contains the prices at which Chris-Craft common stock traded on the NYSE from October 1, 1968 to June 9, 1970.

2 [Proposed by Chris-Craft] Piper Aircraft Corporation ("Piper") is a Pennsylvania corporation having its principal place of business in Lock Haven, Clinton County, Pennsylvania. Piper is a publicly held corporation engaged in the manufacture and sale of light aircraft. Its capital stock consists of 5,000,000 authorized shares of which approximately 1,644,790 shares are issued and outstanding. Piper common stock was listed on the NYSE from 1957 until August 11, 1969, and has been registered on the Philadelphia-Baltimore-Washington Stock Exchange ("PBWSE") since April 1969, having been previously granted unlisted trading privileges on the PBWSE on April 10, 1967. The Appendix attached hereto contains the prices at which Piper traded on the NYSE from October 1, 1968 to August 11, 1969, the bid and asked prices for Piper shares over-the-counter between April 8 and April 18, 1969 and the prices on the PBWSE from August 11, 1969 to June 9, 1970.

3. [Proposed by Chris-Craft] Bangor Punta Corporation ("Bangor Punta") is a Delaware corporation with its principal executive offices in Greenwich, Connecticut. Shares of Bangor Punta's common and convertible preference stocks and bonds are traded on the NYSE. The Appendix attached hereto contains the [ ] prices at which shares of Bangor Punta common stock were traded on the NYSE from October 1, 1968 to June 9, 1970.

4. [Proposed by Chris-Craft] The First Boston Corporation ("First Boston") is a corporation organized under the laws of Massachusetts and is a broker-dealer registered with the Securities and Exchange Commission ("SEC") doing business in the City, County and State of New York. First Boston had for several years prior to 1969 acted as Piper's investment banker.

5. [Proposed by Chris-Craft] The "Piper family" as used herein consists of the 43 individuals, trusts and corporations whose names appear on Schedule 1 to the May 8, 1969 agreement between Bangor Punta and such persons (Chris-Craft Exhibit 1).

6. [Proposed by Chris-Craft] The following individual defendants who have been served and have appeared in this action acted in the relevant period in the indicated capacities:

William T. Piper, Jr.
President of Piper. Chairman of the Board of Piper from March 25, 1969 until August 12, 1969.

Thomas F. Piper
Vice President of Piper, Director of Piper until August 12, 1969.

Howard Piper
Executive Vice President of Piper. Director of Piper until August 12, 1969.

David W. Wallace
President and chief executive officer of Bangor Punta. Assistant Vice President and director of Piper as of August 12, 1969.

Nicolas Salgo
Chairman of the Board of Bangor Punta and, as of August 12, 1969, Chairman of the Board of Piper.

Paul L. Miller
President of First Boston.

Nicholas H. Beyard
Vice President in the underwriting department of First Boston.

Revised 11/24/70 - JJA

214 A

7. [Proposed by Chris-Craft] In January 1969 four of the eight-man Board of Directors of Piper were members of the Piper family as defined herein (W. T. Piper, W. T. Piper, Jr., Howard Piper, Thomas F. Piper), each of whom had been a director since 1952 or before. Of the other four directors, two were retired (R. K. Griffin, Norman J. Greene) and two were employees of the corporation (Walter C. Jamouneau, Charles W. Pool), and none, according to Piper's proxy statement dated January 4, 1969, owned as of November 6, 1968 more than 2,500 shares of Piper.

Revised 11/25/70

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8. [Proposed by Chris-Craft] Those members of the Piper Board of Directors who were also members of the Piper family, as defined herein, reported in various filings with the SEC, including Piper's January 4, 1969 proxy statement, that they beneficially owned about 20% of Piper's outstanding common stock, or approximately 325,000 shares. The Piper family, as defined herein, collectively owned in 1968 and until August 7, 1969 approximately 500,000 shares of Piper common stock, or about 31% of the outstanding shares. No Schedule 13D under Sections 13 and 14 of the Securities Exchange Act of 1934 was filed by the Piper family, as defined herein, with reference to their ownership of Piper shares at any time.

Revised 12/15/70

8A. [Proposed by Piper] In an article about Piper which appeared in the November 7, 1968 issue of "Forbes" magazine the statement was made that "the Piper family owns about a third of the stock." Mr. Siegel (Pres. of Chris-Craft) read said article before Chris-Craft purchased any shares of Piper stock.

Revised 11/25/70

11. [Proposed by Chris-Craft] Between December 30, 1968 and January 23, 1969, Chris-Craft purchased 200,500 shares of Piper stock for cash at prices ranging from 50-7/8 to 65.

Rev. 1/18/71

11A. [Proposed by Piper] On January 14, 1969, Chris-Craft had a meeting of shareholders and a meeting of its Board of Directors. No mention of Chris-Craft's purchases of Piper stock, amounting to 94,900 shares, was made at the shareholders' meeting and the minutes of the subsequent Board of Directors' meeting reflect no discussion or action relating to Piper. No public statement concerning purchases of Piper stock was made by Chris-Craft until it announced its cash tender offer on January 23, 1969.

Revised 11/25/70

12. [Proposed by Piper] [Adopted by Chris-Craft] On January 23, 1969, Chris-Craft issued a press release announcing:

(a) that it was offering, commencing immediately, to purchase up to 300,000 shares of Piper common stock at $65 per share (the "Chris-Craft tender offer");

(b) that it already owned 200,500 shares of Piper amounting to approximately 12-1/2% of the outstanding shares;

(c) that if 300,000 shares or less were tendered, Chris-Craft would buy them all, but if more than 300,000 shares were tendered, Chris-Craft, at its option, may purchase all or any part of the excess;

(d) that in making the purchase, Chris-Craft proposed to use its general funds, but if additional funds were required, it proposed to borrow from banks on a short-term basis although no arrangements for such borrowings had been made;

(e) that Chris-Craft was purchasing the Piper shares for investment with a view to control of Piper, but it did not presently have any specific plan or proposal with respect to Piper.

The closing price of Piper common stock on January 22, 1969 on the NYSE was $52.50.

12A. [Proposed by Piper] Chris-Craft's Board of Directors on January 29, 1969 adopted the following resolution, which was the first resolution relating to Piper:

> "RESOLVED, that the action of the officers of this Corporation and each of them in offering to purchase 300,000 shares of Common Stock of Piper Aircraft Corporation ('Piper') for a cash purchase price for $65 per share subject to the terms and conditions set forth in the Offer and in the Letter of Transmittal be and the same is hereby ratified, approved and confirmed on behalf of this Corporation and the officers and each of them are hereby authorized and directed to take all action deemed necessary or desirable by them and each of them to carry out the provisions of the aforesaid Offer and any action taken or document signed by them or any of them shall be conclusive evidence of their authority in so doing;".

12B. [Proposed by Piper.] No resolution of Chris-Craft's Board of Directors ~~approving~~ RATIFYING the open market purchases of Piper shares or the purchase of the Tech Fund block of shares was enacted until May 12, 1969. Chris-Craft had a standing resolution giving an Investment Committee headed by Mr. Siegel authority to purchase up to six million dollars of any security. On January 22, 1969, prior to the consummation of the purchase of the Tech Fund block of Piper shares, Messrs. Siegel and Gordon contacted other Chris-Craft directors with respect to the Tech Fund block and the making of a tender offer. None of the directors disapproved of the actions taken.

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13. [Proposed by Chris-Craft] Chris-Craft's tender offer dated January 23, 1969 stated, among other things: (a) that it had acquired 200,500 Piper shares since January 1, 1969, of which 99,400 shares were acquired in the open market and 101,100 shares from an institutional investor in a negotiated transaction, (b) that it was making an offer to Piper shareholders to purchase up to 300,000 shares of Piper stock at a price of $65 a share with the right, at Chris-Craft's option, to purchase all or any part of the shares tendered in excess of 300,000 shares, and (c) that Chris-Craft was purchasing the Piper shares for investment with a view to control of Piper but it did not presently have any specific plan or proposal with respect to Piper. Chris-Craft reserved the right at any time to withdraw the tender offer if any material increase in the aggregate number of shares outstanding of Piper or any material change in Piper's capitalization, operations or financial condition was proposed or made.

Chris-Craft's tender offer was republished under date of January 24, 1969 with certain changes and additions which did not alter any of the above statements concerning its tender offer.

1-

13A. [Proposed by Piper] On January 23, 1969, after Chris-Craft had purchased the Tech Fund. block of Piper shares as described in Finding , Chris-Craft announced its cash tender offer for up to 300,000 Piper shares, with the right to accept more shares at its option. The amount of cash available to Chris-Craft at that time was a consideration in Chris-Craft's decision to make its tender offer for up to 300,000 shares. The price of $65 per share was the price Chris-Craft concluded it would have to offer in order to have tendered to it the number of shares it hoped to get.

Rev. 1/18/71

13B. [Proposed by Piper] The attached sheets were prepared by Chris-Craft's controller on January 24, 1969.

FUNDS AVAILABLE
(in $000)

We have on hand in cash and C.D.'s		$14,000
Receivables re: Sale of WBS		1,700
(Payable) re: Purchases of Piper - thru 1/23	(400)	
16,200 plus 2,300 on 1/24	(1,200)	(1,600)
Committment from FNB		10,000
Total Funds Available		$24,100
Payable re: Tender -- 300,000 @ $66		19,800
Balance Available		$ 4,300

Potential Holdings

Purchased through 1/23	203,700
Purchased as of 1/24	16,200
	2,300
	222,200
Potential from Tender	300,000
	522,200
Potential from $3 million of the balance available (@ $65)	46,000
Total Potential from Funds Available	568,200

25

SUMMARY OF CASH FLOW
(in $000)

	Cash	C.D.'s
Balance, December 29		
Proceeds of Debentures	$2,400	$23,000
All Other	800	3,500
	$3,200	$26,500
Less:		
Purchases of Stock -		
Piper	$11,700	
WBS	250	
Fisher	1,400	
Taiwan	110	
Transfer to Boat Division	1,500	
Dividends, Long Term Debt, etc.(net)	740	
	$15,700	
Balance before liquidation of C.D.'s	(12,500)	
Liquidation of C.D.'s	14,500	(14,500)
Balance, January 24	$2,000	$12,000

Note: Payable re: Piper Stock $375
Receivable re: 32,500 WBS $1,720

W.M.
1/24/69

Exhibit 69 for id.

14. [Proposed by Chris-Craft] On the morning of January 23, 1969, Mr. W. T. Piper, Jr. received a telephone call from Mr. Siegel, who informed him that Chris-Craft had acquired a large block of Piper stock and was making a tender offer that day for additional Piper shares.

The following was carried on the Dow Jones at 11:24 A.M. on January 23, 1969:

> "PIPER AIRCRAFT SAYS IT IS NOT INTERESTED IN CHRIS-CRAFT OFFER
>
> "LOCKHAVEN PA - DJ- WILLIAM T. PIPER JR. PRESIDENT OF PIPER AIRCRAFT CO SAID -WE HAVE NO INTEREST AT ALL- IN THE TENDER OFFER FOR PIPER STOCK BEING CONSIDERED BY CHRIS-CRAFT INDUSTRIES
>
> "-WE ARE NOT INTERESTED IN ANY MERGERS OR CHANGES OR ASSOCIATIONS OR ANYTHING LIKE THIS- PIPER SAID
>
> "HE SAID CHRIS-CRAFT TOLD HIM THIS MORNING THAT THERE WOULD BE AN OFFER BUT HE DID NOT KNOW ITS VALUE
>
> "THE PIPER FAMILY OWNS ABOUT 35 PC OF THE PLANE MANUFACTURER-S STOCK
>
> "FOUR OR FIVE MUTUAL FUNDS HOLD ABOUT 15 PC OF THE STOCK WITH THE REST WIDELY HELD PIPER SAID
> -0- 11 24 AM EST"

Acc

New 1/14/71

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14A. [Proposed by Piper] Mr. Piper on the same day contacted First Boston, Chadbourne, Parke, Whiteside & Wolff, Piper's counsel, and Arthur Young & Co., Piper's auditors, with respect to Chris-Craft's announcement and requested information concerning Chris-Craft and Mr. Siegel. Chadbourne called D.F. King & Co.

14(B). [Proposed by First Boston] After Mr. Miller spoke to Piper, he called Mr. Nicholas Bayard, a member of First Boston's Corporate Finance Department, and asked him to begin gathering information. In the course of the day Mr. Bayard called Chadbourne, Parke, Whiteside & Wolff, Piper's counsel, spoke to Mr. Newman, an officer of First Boston, to find out what would be the normal sort of checkpoints in contested takeover situations, and caused to be prepared charts comparing Piper, Chris-Craft, Beech and Cessna, and showing earnings and capitalization consequences of merger of Chris-Craft and Piper. First Boston Charts 1, 2, 3 and 4 contained in Defendants' Exhibit AE-2 were prepared by Bayard.

15. [Proposed by Chris-Craft] On January 23, 1969, defendant Bayard made a series of notes, among which are Exhibits 12, 13, 14 and a part of Exhibit 16 (the balance of Exhibit 16 having been prepared no later than the next week), copies of which are annexed. Exhibit 13 was prepared as a consequence of Bayard's conversation with Newman. Exhibits 14 and 16 include notes of Bayard's conversations with Chadbourne.

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Pipe

Chad Brown, Trade, Wheeler & Hill

FB 10A

Sigal - 200,000 shs. 200,500 (10.5%)

200,000 shs. - put out tenders

400,000

already tendered

2:00 Eri.

Lock Rhodes (Remand Eif)

Annual Meeting on Feb. 4 - January 3 record

most } provides in - about 100,000 shs. }
last }

family } 20%? 430,000 - 21%
trusts }

200,000 shs. + with substitutions

Proceeds used Hill & Knowlton Chas Clark

THL

special counsel for outside directors ..

(Lee Ft Jam) - Selbage & Lee - Davis, Polk & Wa.

proxy statement - Art Long, Dudley King

Chesley

PLAINTIFF'S EX: FOR I.
DEFENDANT'S EX: 12 FOR ID
DATE: 2-[illegible]-70 PHILIP FELDMAN
SHORTHAND REPORTE.

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Piper

1,639,600 shares o/s

21-22% of stock closely held – closer to 30%

50% vote (Pecma. corp.) required

1968 EPS $2.36

Dividend 1.40

curr. px 51⅞ = 22x 1968 EPS

yield 2.70+%

proxy soliciting firms – King, Georgeson – Dick Type

design some letters –

counsel search up, new & addressed envelopes

time schedule

increase in dividend? what have they done for them stockh

pursue any acquisitions

keep a close tab on stock list – transfer agent – daily Manny's

or weekly – problem with street names

go on a staggered directors' system?

annual meeting – special meeting

authorize – preferred

draw bylaws – Union Card – package & material Fastener

Dan

Paul Dan Cadbourne

PLAINTIFF'S EX: 13 FOR ID
DEFENDANT'S EX: FOR ID
3/4/70 PHILIP FELDMAN SHORTHAND REPORTER

Vice Chairman, Parker

Chris Lutz — DEFENDANT'S EXH. 14 FOR ID — Date: 2/4/70 PHILIP FELDMAN SHORTHAND REPORTER

233 A 2 p.m. Fri. mtg. at Leeb Theatres (Ann

FEB 22

Telegram to stockholders

advertisement

telephone call campaign

1) Shares o/s 1,639,000 shs.

30-35%? { Pipe family + trusts - 430,000 (26.2%)
family stock ?

institutions ? 200,000 + ? for 5 with 15%?

Chris-Craft owns 200,500 (10.5%)

Tendered 300,000 @ 65 = 19.5 mm

500,500 (30.8%)

Tender offer expires 12 noon Feb. 3 (Monday)

2) Pennsylvania corporation - 50% margin vote required

no preemptive rights

cumulative voting - 8 directors (2 outside)

Manufacturers Hanover - transfer agent

Bankers Trust - registrar

3) Annual Mtg. on Feb. 4 (Tuesday); record date
(Proxy fight - about 100,000 holders last yr. at this time)

4) proxy solicitor - Carl Long of Dudley King (alternative could be Beck Taps of Georgeson)

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F B12

Technology Fund

{ intending - LR ??
$65 - first 60
dedicated to getting them
will go a yr. if necessary.

[illegible] EX: [illegible]
FENDANT'S EX: 15 FOR ID
ATE: 2/4/70 PHILIP FELDMAN
SHORTHAND REPORTER

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Don Deming - Chadbourne, Parke, Whiteside & Wolff

- tender has to file with SEC
- add in tonight's paper on transamerica company

- merger with Cooks like 50% - checking out
- has gotten permission to contact Kings

friendly - evaluate tender - "is it in the best interests of shareholders
- merger parties

1) hit bid + drive over tender price - 65 bid up over 70

- CNA ?
- INA - possibly because of World Airways - more non-regulated
- Travelers - out
- Cont'l -
- American Standard

Northrop Aviation → Tom Jones recently
→ Chrysler

Avco -
Grumman -

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PLAINTIFF'S EX:
DEFENDANT'S EX: 46
DATE: 2/4/70 PHILIP FELDMAN SHORTHAND REPORTER

15(A). [Proposed by First Boston] On or about January 24, 1969, Bayard made the following notes:

"1) hit bid & drive over tender price - 65 bid up over 70

(CNA?
(
(INA - possibly because of World Airways - move more rapidly -
(
(Travelers - out
(
(Gulf -
(
(American Standard

Northrup Aviation) Tom Jones recently
)
Chrysler)

Avco -

Grumman -"

The companies listed above are companies Bayard had been told had already been, or were to be contacted by Piper or by First Boston on Piper's behalf.

15(B). [Proposed by First Boston] Bayard discussed the notation "hit bid & drive over tender price - 65 bid up over 70" with Laeri, and concluded the suggestion made no sense.

New 11/25/70

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16. [Proposed by Chris-Craft] On January 24, 1969, having decided to oppose the Chris-Craft offer, the management of Piper asked First Boston to contact appropriate corporations and make known management's possible interest in proposals that might be made to Piper, and to analyze such proposals as might be made. First Boston agreed to do so.

18. [Proposed by Chris-Craft] On January 25, 1969, Piper's Board of Directors enacted resolutions stating that in the judgment of the Board of Directors the Chris-Craft tender offer was not in the best interests of the shareholders of the corporation, authorizing the President and other officers of the corporation to make that judgment and any other pertinent matters known to the shareholders of the corporation and authorizing retention of persons to communicate with the shareholders of the corporation concerning the Chris-Craft tender offer. In addition, at the January 25th meeting of Piper's Board of Directors, an Executive Committee, consisting of the officers of Piper who were also directors, was formed. The Executive Committee was given all the authority of the Board of Directors in the management of the business of the corporation at all times the Board of Directors was not meeting.

19A. [Proposed by Piper] The Executive Committee appointed at the Piper Board of Directors' meeting on January 25, 1969 did not meet or take any action at any time.

Revised 12/15/70

20. [Proposed by Chris-Craft] On January 25, 1969 Piper sent to its shareholders a night letter reading as follows:

"THE BOARD OF DIRECTORS OF PIPER AIRCRAFT CORPORATION STRONGLY URGES YOU NOT TO TENDER YOUR PIPER SHARES TO CHRIS-CRAFT INDUSTRIES, INC. IN RESPONSE TO THEIR TENDER OFFER OF $65 PER SHARE. A LETTER CONTAINING IMPORTANT INFORMATION IS BEING MAILED TO ALL PIPER SHAREHOLDERS. THE OFFER REMAINS OPEN UNTIL FEBRUARY 3 AND WE URGE YOU NOT TO ACT HASTILY.

W.T. PIPER JR. PRESIDENT PIPER AIRCRAFT CORP."

Revised 11/25/70

21. [Proposed by Chris-Craft] Piper sent the following letter through the mails to its shareholders dated January 27, 1969 bearing the signature of W. T. Piper, Jr.:

[attached]

[Chris-Craft Exhibit 17]

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Piper Aircraft Corporation

Lock Haven, Pennsylvania 17745

IMPORTANT

January 27, 1969

DEAR SHAREHOLDER:

In an attempt to gain control of your Company, Chris-Craft Industries, Inc., a small New York-based conglomerate, has offered to purchase 300,000 shares of Piper Common Stock at $65 per share.

Your Board of Directors has carefully studied this offer and is convinced that it is inadequate and not in the best interests of Piper's shareholders. Accordingly, your Board unanimously urges that it be rejected. **Not one member of your Board of Directors or management will tender his shares.**

Obviously, if Chris-Craft is suddenly willing to offer you $65 per share for your shares, Chris-Craft must believe that Piper stock is worth substantially more than it is offering.

Remember, any tender of your shares will be irrevocable on or after January 30, 1969. In other words, after this date your shares could be out of your possession and control until March 24, 1969 and without any payment to you.

In addition, this offer is conditioned on your surrendering to Chris-Craft an irrevocable proxy for the annual meeting on February 4, 1969. Your management believes this is a solicitation of proxies without proper compliance with the federal securities laws and has referred the matter to counsel.

In your own best interest, we urge you to consider carefully the following important points:

1. This offer is a fully taxable transaction.

2. Piper's stock has traded as high as $72.25 on the New York Stock Exchange within the past eight months.

3. Piper's sales increased more than 20% in fiscal 1968 over the prior year, and its earnings per share were approximately 29% higher.

4. The general aviation industry is a growth industry, and Piper expects to participate fully in this growth.

You should know that Piper's management has had preliminary discussions with several major industrial corporations regarding possible combination with Piper. These are continuing. In the opinion of your Board of Directors and management, if a merger or consolidation were deemed advisable, a higher value could be realized for all shareholders and possibly on a tax-free basis. Any shareholder who has tendered his shares will not, of course, benefit from any such development.

For these reasons, your Board of Directors again strongly recommends that you reject the Chris-Craft offer.

We will forward additional important information to you within the next several days. If I can be of further assistance to you, please do not hesitate to call me collect at (717) 748-6711.

Sincerely,

W. T. Piper, Jr.

W. T. PIPER, JR.
President

22. [Proposed by Chris-Craft] The letter quoted in Finding 21 was drafted by D. F. King & Co. and the draft was shown to several persons including Piper's attorneys and defendant Bayard. Mr. Bayard suggested a change in item No. 4 of the sixth full paragraph (which currently reads: "The general aviation industry is a growth industry, and Piper expects to participate fully in this growth"). He testified at his deposition that he suggested the change because he thought the language as then written was "much more puffy than it should have been."

22(A). [Proposed by First Boston] The January 27 letter did not refer to First Boston or in any way indicate approval or sponsorship by First Boston. Mr. Miller did not see the January 27 letter prior to the time it was mailed.

22(C). [Proposed by First Boston] Neither Mr. Bayard nor any other representative of First Boston saw the letter again until it had been mailed to the Piper shareholders, and neither he nor any other representative of First Boston was present at the Piper Board of Directors' meeting of January 25, 1969, at which meeting the letter was presented to the Board of Directors for approval and approved by it.

24. [Proposed by Chris-Craft] Piper sent through the mails the following letter to its shareholders dated January 28, 1969 bearing the signature of W. T. Piper, Jr.:

[attached]

[Chris-Craft Exhibit 113]

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Piper Aircraft Corporation

Lock Haven, Pennsylvania 17745

January 28, 1969

DEAR SHAREHOLDER:

In our letter of January 27, 1969, the Board of Directors unanimously urged you to reject the tender offer, conditioned upon an "irrevocable" proxy, by Chris-Craft Industries, Inc. Your Management firmly believes this offer is inadequate and not in the best interests of Piper shareholders.

The annual meeting of shareholders of Piper will be held Tuesday, February 4, 1969 to elect directors and approve the selection of independent auditors. All shareholders as of the record date, January 3, 1969, are entitled to vote at this meeting. Since the directors are to be elected on a cumulative voting basis it is important to have as high a representation as possible at the meeting.

Chris-Craft has announced that it has purchased 200,500 shares of Piper previous to its tender offer "with a view to control of Piper". In addition, Chris-Craft has stated that if its offer is successful it would then plan to combine Chris-Craft and Piper. Since Chris-Craft's offer, which expires on February 3, 1969, asks for an "irrevocable" proxy for the annual meeting to be held the following day, Chris-Craft would then be in a position to elect its own representatives to your Board of Directors. ***If Chris-Craft then continued its plan to combine Chris-Craft and Piper, Chris-Craft in effect would be dealing with itself or its own representatives.*** Certainly the fiduciary duty of Piper's Board of Directors is to the Piper shareholders. On the other hand, the fiduciary duty of Chris-Craft's directors or representatives would be to Chris-Craft's shareholders—*not to you.*

Your Board of Directors and Management firmly believe that Chris-Craft's offer is the first step in a plan to gain control of Piper and then merge Piper into Chris-Craft Industries rather than dealing on an arm's-length bargaining basis.

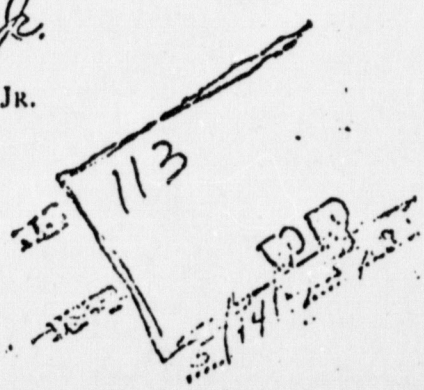
In your own best interests, we urge you to support your present independent Board of Directors. Regardless of the number of shares you may own please sign, date and mail your proxy today.

We will continue to keep you informed.

Sincerely,

W. T. Piper, Jr.

W. T. PIPER, JR.
President



24A. [Proposed by Piper] On January 28, 1969 Chris-Craft sent the following letter to the shareholders of record of those Piper shares which Chris-Craft had purchased over the NYSE prior to January 28, 1969:

Chris-Craft
INDUSTRIES, INC.

600 MADISON AVENUE / NEW YORK, N.Y. 10022 / (212) 421-0200

C. LEONARD GORDON
VICE PRESIDENT
GENERAL COUNSEL

January 28, 1969

Gentlemen:

We have purchased and are the owners of certain shares of Common stock of Piper Aircraft Corporation. The messenger who is delivering this letter to you will display to you xerox copies of those shares. You are the record owner of those shares. The shares were purchased too late for us to be of record January 3, 1969, the record date for the meeting of shareholders of Piper called for February 4, 1969. As the owners, of course, we, rather than the seller of such shares, should be entitled to vote them at said meeting of shareholders.

Your attention is called to Section 609-d of the New York Business Corporation Law which provides that:

> "...the record holder of shares which...belong to another, shall issue to...such owner of such shares upon demand therefor and payment of necessary expenses thereof, a proxy to vote or take other action thereon".

We hereby demand a proxy for these shares which we have purchased and own, and make offer to pay all expenses you may incur in connection with obtaining such vote. A form of our proxy is enclosed herewith. This letter is not seeking any proxy for shares which we do not own.

Very truly yours,
CHRIS-CRAFT INDUSTRIES, INC.

C. Leonard Gordon
Vice President
and
General Counsel

CLG/cg

PROXY

The undersigned hereby irrevocably appoints HERBERT J. SIEGEL, JAMES J. ROCHLIS and C. LEONARD GOMON (all of whom are officers of Chris-Craft Industries, Inc.), and each of them acting without the others, the attorneys and proxies of the undersigned, with power of substitution to vote all the shares (including any shares distributable with respect thereto by reason of a stock split, stock dividend or other distribution of stock) of Piper Aircraft Corporation purchased by Chris-Craft Industries, Inc. on or before the date of any annual or special meeting which the undersigned is entitled to vote at any such meeting and at any adjournment or adjournments thereof. Said proxies, and each of them, are authorized to vote such shares in such manner as they shall in their sole discretion deem proper. This Proxy shall revoke any other proxy issued prior to any such meeting with respect to such shares purchased by Chris-Craft Industries, Inc. and constitutes a notice to the Secretary of Piper Aircraft Corporation of the revocation of each such other proxy, a copy of which notice the above attorneys and proxies, and each of them acting without the others, are hereby authorized to deliver to such Secretary.

SIGN HERE AND ABOVE

x.....

x.....

Signature(s) of registered holder(s).

Must be signed by registered holder(s) exactly as name appears in certificate(s). See instructions.

Insert number of shares tendered: [ ]

Dated ....., 1969

Revised 12/15/70

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28. During the eight-month period preceding its January 27 and January 28, 1969 letters, the sales of Piper stock by Piper officers and employees shown on Schedule A took place:

[see attached schedule]

The fact of these sales was not stated in the January 27 or January 28, 1969 letters to Piper shareholders.

SCHEDULE A

SALES OF PIPER STOCK DURING
THE SUMMER OF 1968

Name	Date of Sale	Number Sold	Price
J. Cattoni Controller	June 5, 1968	750	$68
	June 15, 1968	300	$65
Henry Ebeling Assistant Controller	May 31, 1968	50	$64-3/4
	June 20, 1968	500	$69
Walter C. Jamoneau Director, Secretary and Chief Engineer	June 7, 1968	30	$71-3/8
	June 7, 1968	100	$71-5/8
	June 17, 1968	200	$69-5/8
	June 24, 1968	400	$68-1/8
Charles W. Pool Director, Treasurer	June 13, 1968	100	$70
	July 8, 1968	1,000	$63-1/2

28A. [Proposed by Piper] The aforesaid sales by Mr. Jamouneau and Mr. Pool of their Piper stock were reported in Forms 4 filed by them with the SEC in July and August, 1968. Mr. Cattoni and Mr. Ebeling were not directors of Piper nor, according to Piper's By-Laws, officers thereof and did not file Forms 4.

29. Piper's sales had declined from $24.1 million to $21.4 million in the first quarter of fiscal 1969 (ending December 31, 1968) compared to sales in the first quarter of fiscal 1968 and Piper's earnings had declined from $1.3 million to $.98 million compared to the equivalent quarter of 1968. These declines in sales and earnings were not stated in the January 27 or January 28, 1969 letters to Piper shareholders. These declines in sales and earnings were announced to Piper's shareholders in a Piper press release dated January 29, 1969, while Chris-Craft's tender offer was still open, which release was issued to the press, and not mailed to Piper's shareholders.

JLC

Rev. 1/18/71

29B. [Proposed by Piper/~~--Contested~~] ~~As Piper had anticipated, its sales and earnings for fiscal year 1969 (ending September 30, 1969) were up.~~

[Uncontested] Piper reported that its sales and earnings in fiscal 1969 were up by $10 million in sales and $1 million in earnings. The comparative figures were:

	1969	1968
Sales	$106,569,202	$96,723,812
Earnings	4,801,317	3,863,416

~~Trial testimony of W. T. Piper, Jr. and Charles W. Pool.~~

~~Piper's 1969 Annual Report.~~

30. The minutes of a meeting of the Piper Board of Directors on August 6, 1968, include the following:

> "The Treasurer said that he is opposed to producing the Pocono for a number of reasons. The company does not have capabilities at this time to manage this type of operation. Furthermore, 1970 is not a feasible date for introduction, as it has taken two and one half years to develop the Pressurized Navajo, and the Pocono presents a very substantial problem in coordination. This is an inappropriate time to seek additional funds with two bad years behind us, thereby making it difficult to explan to investors the shrinkage in business and profits. An additional reason is that single engine markets of the Corporation are deteriorating while over 50% of the development time at Vero Beach and top priority is assigned the Pocono. We cannot afford to abandon our current markets while trying for new ones. Manufacturing at Lock Haven is in a confused state and is unable to meet schedules. Engineering has not met schedules for years. The Corporation is currently unable to handle volume of one hundred million dollars annually and significant changes and improvements in both management and systems must take place before we are capable of handling greater volumes. The morale of employees at Lock Haven is at a low point and is deteriorating further."

These opinions of Piper's Treasurer were not stated in the January 27 or January 28, 1969 letters to Piper shareholders. The minutes of the August 6, 1968 meeting were made available to Mr. Gordon of Chris-Craft in April 1969 after he became a director of Piper and made a demand therefor.

31(A). [Proposed by First Boston] At the time the January 27, 1969 letter was sent to shareholders First Boston had not been told

(a) of the sales of Piper stock referred to in Finding 28,

(b) that Piper's earnings for the first quarter ended December 31, 1968 had declined compared to the quarter ended December 31, 1967.

(c) that Piper's sales had declined from $24.1 million to $21.4 million in the first quarter of fiscal 1969 compared to the first quarter of fiscal 1968.

(d) of the opinions expressed by the Treasurer to the Piper Board of Directors on August 6, 1968 referred to in Finding 30.

31(B). [Proposed by First Boston] On January 24th Mr. Bayard had asked Mr. Pool about first quarter performance. Pool had told him that no preliminary figures were available; that there was some softening in aircraft sales but that he did not have a handle on it; that he did not have a handle on earnings for the quarter; and that the company was looking for earnings for the current fiscal year in the area of $3.00 to $3.10 for the year ending September 30, 1969. (Earnings for the year that had ended in September 1968 were $2.92 per share.) None of these unconfirmed figures was included in the letter.

310. [BP]

Bangor Punta did not see that portion of the Arthur Young & Co. work papers quoted in Finding 31, and did not learn of the determination by Arthur Young & Co., if any, quoted in Finding 31 until after November 1969.

35. [Proposed by Chris-Craft] On January 25, 1969 representatives of Piper met with the president of Grumman Aircraft Engineering Corporation ("Grumman"), and others, at which meeting consideration was given to a proposed transaction by which Grumman would buy 300,000 shares of Piper authorized but unissued stock at $65 per share.

Mr. Miller of First Boston attended said meeting at the invitation of Piper and Messrs. Brady and Wadsworth of Dillon Reed attended at the invitation of Grumman.

JCC

35(A). [Proposed by First Boston] The January 25th meeting was arranged by Howard Piper and Thomas Evans, the President of Grumman. First Boston had not suggested Grumman as a merger partner, and had not arranged the meeting. It learned that an approach to Grumman had been made when W. T. Piper, Jr. called Mr. Miller, told him of the meeting, and asked him to attend. Mr. Miller agreed to do so.

36. [Proposed by Chris-Craft] On January 28, 1969 Piper and Grumman entered into an agreement (signed by W. T. Piper, Jr. on behalf of Piper) containing the following provisions:

> "1. Sale of Stock. Grumman will purchase 300,000 authorized and unissued shares of Common Stock of Piper (hereinafter referred to as the 'Piper Shares') for a purchase price of $65.00 per share.
>
> 2. Closing. The Closing of the transaction herein provided for shall take place at 10:00 A.M. New York City time on the third business day following the approval for listing on the New York Stock Exchange of the Piper Shares but in no event later than February 28, 1969. The Closing shall take place at the offices of Messrs. Mudge Rose Guthrie & Alexander, 20 Broad Street, New York, New York. At the Closing Grumman shall deliver to Piper against delivery of a certificate for 300,000 shares of Common Stock of Piper a certified or official bank check in New York Clearing House funds in the amount of $19,500,000. Grumman agrees to deliver to Piper at the Closing an investment letter to the effect that Grumman is purchasing the Piper Shares for investment and not with a view to the public distribution thereof.
>
> 3. Listing. Piper agrees promptly to apply to the New York Stock Exchange for the listing of the Piper Shares and it shall be a condition of Grumman's obligation to purchase such shares that they be approved for listing on notice of issuance prior to Closing.
>
> 4. Merger. It is the intention of Grumman and Piper to explore the desirability of a merger of their two corporations. During the period of 180 days after the date hereof Grumman and Piper may each make or cause to be made such investigations of the properties and business of each other and of their

subsidiaries and their financial and legal conditions as each shall deem necessary or desirable, subject, however, to all applicable United States security regulations.

5. Grumman's Right of Sale. Grumman shall have the right during the period of 30 days hereof or following the expiration of the 180 days from the date hereof or following any termination hereof, to require Piper to find another purchaser for or to repurchase the Piper Shares at a price of $65.00 per share payable by certified or official bank check in New York Clearing House funds at a closing date to be specified in Grumman's notice to Piper that it is exercising this right. In order to insure Piper's ability to repurchase such shares, it is agreed that the purchase price of the Piper Shares paid by Grumman to Piper hereunder shall be invested in short-term government or bank obligations, short-term commercial paper or securities traded on the New York Stock Exchange, all of which shall be kept separate from Piper's other assets and shall not be subject to any lien, pledge or charge of any kind without the consent of Grumman. In the event of any reclassification of or stock dividend on the Piper Shares prior to sale thereof under this paragraph 5, the price per share payable on such sale will be appropriately adjusted.

* * *

8. Conditions to Grumman's Obligations. Grumman's obligation to purchase the Piper Shares shall be subject to the following conditions in addition to the other terms and provisions hereof:

(a) Piper shall deliver to Grumman undertakings in writing from the persons listed in Schedule I hereto agreeing that, until a date nine months from the

ALL

date hereof or until Grumman disposes of the Piper Shares, whichever first occurs, such persons will not sell or otherwise dispose of any shares of Piper Common Stock without the consent of Grumman, except that such shares may be transferred without such consent from any person listed in Schedule I to another person listed in Schedule I.

(b) The present management of Piper shall remain in control of Piper. For this purpose they shall be deemed to remain in control so long as the present principal operating officers of Piper remain active in the management and at least five of the management nominees for election as directors at the Piper annual meeting to be held on February 4, 1969 shall remain in office.

* * *

9. Payment to Grumman. Upon the exercise by Grumman of its right to require Piper to repurchase the Piper Shares or upon the expiration of such right or the date of any earlier sale by Grumman of the Piper Shares, Piper will pay to Grumman interest at the rate of 3-1/2% per annum on the $19,500,000 for the period from the Closing to the date of such exercise, expiration or sale.

* * *

11. Termination. This Agreement may be terminated at any time by the mutual consent of Piper and Grumman. It may also be terminated by Grumman on 10 days' notice if less than a majority of the Piper Board of Directors shall consist of the management nominees for election as directors at the 1969 Piper annual meeting or successors elected by a majority consisting of such management nominees.

If the foregoing is acceptable to you, please confirm such acceptance by signing and returning to us the copy of this letter which is handed you for the purpose, whereupon, subject to the approval hereof by the respective Boards of Directors of Grumman and Piper, this letter shall become a binding agreement between us.

* * *

SCHEDULE I

William T. Piper, Sr.	73,000
Mrs. Clara S. Piper	9,207
The Piper Investment Company	37,500
Castanea Realty Company, Inc.	67,500
The Piper Foundation	7,005
William T. Piper, Jr.	38,203
Margaret Bush Piper	1,560
Mary P. Bolles	22,959
Mary Piper Bolles, Trustee for John Thomas	1,500
Thomas F. Piper	34,120
Thomas F. Piper, Jr.	13,000
John R. Piper	4,344
William H. Piper	4,344
Howard Piper	35,717
Helen W. Piper	7,780
Howard Piper, Jr.	2,581
Howard Piper, Custodian for Howard Piper, Jr.	2,025
First Natl Bank, for Howard Piper, Jr.	4,631
Elizabeth P. Harford	33,870
Elizabeth P. Harford, Custodian for Jane Harford	60
First Natl Bank, for Jane Harford	1,984
TOTAL SHARES	402,890"

D11

36A. [Proposed by Piper] The undertakings from the persons listed in Schedule I referred to in paragraph 8(a) of the Grumman agreement quoted in Finding 36 were never sought nor obtained.

37. [Proposed by Chris-Craft] On January 29, 1969, while Chris-Craft's tender offer was pending, Piper issued a press release stating:

[see attached]

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NEWS FROM PIPER

PER AIRCRAFT CORPORATION • PUBLIC RELATIONS DEPARTMENT • (717) 748-6711 LOCK HAVEN, PA.
EW YORK PUBLIC RELATIONS OFFICE • SUITE 1106, 52 VANDERBILT AVENUE, N. Y. • (212) 686-3331

FOR RELEASE January 29, 1969

HJS
CLG

New York, N. Y. -- January 29, 1969. Grumman Aircraft Engineering rporation has agreed to purchase 300,000 shares of Piper Aircraft Corporation's horized but unissued common stock at $65 per share, according to an announce-t by E. Clinton Towl, Chairman of Grumman, and William T. Piper, Jr., sident of Piper. The agreement is subject to the approval of the respective rds of Directors of the two companies, both of whom are scheduled to meet on rsday, January 30, 1969, to consider the transaction.

Mr. L. J. Evans, President of Grumman, said the purchase provides an ortunity for Grumman and Piper to study the feasibility and advantages of a ible combination of the two companies. He added that Grumman has been fully studying the potential of the general aviation industry and the possibility rther diversification into commercial business, not only in the aircraft industry n other fields.

Mr. Piper stated that his firm, a manufacturer of a wide assortment of orate and private aircraft models for the commercial market, would expect to it materially from its association with Grumman in the areas of finance, pro-on capability and technology.

-more-

PLAINTIFF'S EX: FOR ID
DEFENDANT'S EX: 21 FOR ID
DATE: 2/4/70 PHILIP FELDMAN
SHORTHAND REPORTER

EXHIBIT A

The sales agreement is subject to various conditions, including that the shares be listed on the New York Stock Exchange, that there be no material adverse change in the business of Piper, and that there be no change in control of Piper.

-30-

38. [Proposed by Chris-Craft] Piper sent through the mails to its shareholders a letter dated January 29, 1969, signed by W. T. Piper, Jr., reading as follows:

> "A news release issued on Wednesday, January 29, 1969, announced that Grumman Aircraft Engineering Corporation has agreed to purchase 300,000 shares of Piper's authorized but unissued common stock at $65 per share, subject to the approval of the directors of both companies.
>
> "The text of the release is as follows".

The letter then quoted the text of the press release set forth in Finding 37 and concluded with the following:

> "Since the February 4th annual meeting is only a few days away, we urge you to sign, date and mail the enclosed proxy now."

38(A). [Proposed by First Boston] No representative of First Boston was present when the press release and the letter to shareholders referred to in Findings 37 and 38 were drafted.

38(B). [Proposed by First Boston] First Boston was not asked to approve the press release and letter to shareholders referred to in Findings 37 and 38.

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38(C)(1) [Proposed by Chris-Craft -

Mr. Bayard testified on deposition (pp. 85-86) as follows concerning the letter and press release referred to in Findings 37 and 38:

> "I do not remember being part of any drafting of the letter of the 28th, which is Exhibit 113; and I have seen the text of the news release, which is inserted in this letter of the 29th, and I do not recall whether or not I saw it after its release to the papers."

Bayard 85-86

39. [Propcsed by Chris-Craft] The announcement of the Piper-Grumman agreement was reported in newspapers throughout the country, including the Wall Street Journal and the New York Times of January 30, 1969. Copies of the Wall Street Journal and New York Times articles are attached.

39B. [Proposed by Piper] Between January 24 and February 3, 1969, while its cash tender offer was outstanding, Chris-Craft purchased 38,800 Piper shares over the NYSE at prices below $65 per share. During that period, 97,500 Piper shares were traded on the NYSE.

40. [Proposed by Chris-Craft] The January 29, 1969 announcement did not state that (a) Grumman had the right under the agreement during the period of 30 days following the expiration of 180 days from the date of the agreement to require Piper to find another purchaser for or to repurchase the 300,000 Piper shares at $65 per share or (b) the agreement provided that "In order to insure Piper's ability to repurchase such shares" the purchase price paid by Grumman shall be invested in short-term government or bank obligations, short-term commercial paper or securities traded on the NYSE, all of which shall be kept separate from Piper's other assets.

40A. [Proposed by Piper] The January 29, 1969 announcement also did not state that if Grumman desired to sell the shares otherwise than in an underwritten secondary distribution, it had to give Piper a right of first refusal, or if Grumman desired to sell the shares in an underwritten secondary distribution, Piper had the right to purchase the shares at a price determined by the mean high and low price on the NYSE, or that if Piper repurchased the shares within 210 days from the date of the agreement, it had to do so at $65 per share, or that Piper's right to repurchase was not effective if the shares were to be disposed of by Grumman in a merger to which Piper was a party.

The agreement also provided, and the announcement did not state, that Grumman had the right at any time within three months after 180 days from the date of the agreement to require Piper to use its best efforts to register the shares under the 1933 Act and to qualify them under applicable state laws. The agreement further provided, and the announcement did not state, that if Grumman exercised its right to require Piper to repurchase the shares or if that right expired unexercised or if Grumman sold the shares before either event, then Piper will pay Grumman interest on the $19,500,000 to be

paid by Grumman to Piper at 3-1/2% per annum from the date of the closing to the date of the exercise, expiration or sale.

The agreement further provided, and the announcement did not state, that Piper had a right to repurchase the shares at any time at $65 per share in the event there was a change in the control of Grumman, such change in control being defined as Grumman becoming a subsidiary of, or being merged into or selling its assets to, another corporation, or if at least a majority of Grumman's then present directors cease to remain directors of Grumman.

43A. [Proposed by Piper] The minutes of a meeting of the Chris-Craft Board of Directors on January 31, 1969, state the following:

> "The Chairman reported the progress of the tender offer to purchase 300,000 shares of Piper Aircraft Corporation ('Piper') Common Stock and stated that inasmuch as the Company's decision to go forward with the tender offer or to exercise its right to withdraw due to the proposed material increase in the aggregate number of outstanding stock of Piper which would result from the purchase by Grumman Aircraft Engineering Corporation ('Grumman') heretofore announced by Piper, would depend upon the number of shares tendered pursuant to the offer which number could not be determined until the expiration of the offer at 5:00 p.m. on February 3, 1969. He recommended that no action be taken at this time but that a special meeting of this Board be called to be held at 21 West 52nd Street, New York, New York at 8:00 p.m. on Monday, February 3, 1969. After a general discussion and upon motion duly made and seconded, the meeting was adjourned."

The minutes of Chris-Craft's Board of Directors' meeting on February 3, 1969 state as follows:

> "The Chairman reported to the Board that he was in contact with Director, C. Leonard Gordon who was unable to attend the meeting as he was at the office of our depositary, the Bank of New York, and was engaged in witnessing the count of shares of Piper Aircraft Corporation ('Piper') Common Stock tendered pursuant to this Company's offer to purchase 300,000 shares for a purchase price of $65 per share. He stated that Mr. Gordon reported that approximately 305,000 shares of Piper Common Stock had been tendered pursuant to the offer. Of these shares, Mr. Gordon estimated that a substantial number would not comply with all of the condi-

tions of the offer and therefore, this Company may not be able to vote all of such shares tendered at the annual Shareholders Meeting of Piper to be held tomorrow, February 4, 1969, at Lock Haven, Pennsylvania. The Chairman stated that if the Company purchased all of the shares tendered, it would own approximately 1/3 of the issued and outstanding Common Stock of Piper. He was of the further opinion that such ownership would assure this Company representation on the Board of Directors of Piper. After full discussion and upon motion duly made and seconded, it was unanimously

"RESOLVED, that this Company purchase all of the shares of Common Stock of Piper Aircraft Corporation ('Piper') tendered pursuant to the offer to purchase up to 300,000 shares of the Common Stock of Piper subject to the terms and conditions set forth in the Offer and the Letter of Transmittal in the total number of approximately 305,000 shares;".

44. [Proposed by Chris-Craft] Prior to the termination of and in connection with the Grumman agreement, defendant Bayard dictated to his secretary the following document entitled "Stockholder Approval-Exchange Policy" out of the N.Y.S.E. Company Manual:

[attached]

[Chris-Craft Exhibit 124]

GF

FB 48

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Stockholder Approval - Exchange Policy

Stockholder approval is a prerequisite to listing securities to be issued for or in connection with an acquisition*, direct or indirect, of a business, a company, tangible or intangible assets or property or securities representing any such interests:

1. From a director, officer or substantial security holder of the company (including its subsidiaries and affiliates) or from any company or party in which one of such persons has a direct or indirect interest;

2. Where the present or potential issuance of common stock or securities convertible into common stock could result in an increase in outstanding** common shares approximating 20% or more; or

3. Where the present or potential issuance of common stock and any other consideration has a combined fair value approximating 20% or more of the market value of the outstanding** common shares.

*A series of closely related transactions may be regarded as one transaction for the purpose of this policy.

**Only those shares actually issued and outstanding (excluding treasury shares or shares held by a subsidiary) are to be used in making this calculation. Unissued shares reserved for issuance upon conversion of securities, exercise of options or warrants for any other purpose will not be regarded as outstanding.

Churchill

ALWAYS EX: 124

DATE 6/15/70 PHILIP FELDMAN SHORTHAND REPORTER

45. [Proposed by Chris-Craft] Handwritten notes of Mr. Bayard, made in connection with the Grumman transaction contained the following:

> "6) Can't issue 20% keyed to market value or more of stock (other than for cash) for assets -- NYSE req. If you do.
>
> "7) 2 weeks to list new shares -- Don seeing stock list people tomorrow (10 A.M.) re Grumman shares."
>
> [Chris-Craft Exhibit 24]

Other handwritten notes of Mr. Bayard, made in connection with the Grumman transaction contain the following:

> "1. How soon can Grumman act on decision on Piper.
>
> * * *
>
> "3. What are limitations on share issuance without vote of shareholders. - NYSE 20%"
>
> [Chris-Craft Exhibit 26]

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46. [Proposed by Chris-Craft] On March 19, 1969 Piper and Grumman terminated the January 28, 1969 agreement after the NYSE had advised Piper and Grumman that they would not list the 300,000 Piper shares.

46A. [Proposed by Piper] On February 4, 1969 Chris-Craft stated to Dow Jones that its offer for Piper Aircraft common stock was concluded successfully with the tender of more than the 300,000 shares requested, that all stock tendered was accepted and that Chris-Craft then owned approximately 540,000 shares of Piper. The Wall Street Journal reported on February 5, 1969 that Chris-Craft's tender offer was "more than successful." Chris-Craft acquired 304,606 shares on its tender offer.

47A. [Proposed by Piper] On Sunday, February 2, 1969, Chris-Craft's controller advised the PNB to have the $15 million loan available in New York on the morning of February 3rd. Chris-Craft's tender offer did not expire until 5:00 P.M. on February 3rd.

47B. [Proposed by Piper] The Chris-Craft Board of Directors adopted a resolution authorizing Chris-Craft's officers to borrow money and obtain credit from the Philadelphia National Bank at the Chris-Craft Board meeting on the evening of February 3, 1969. No other resolution authorizing Chris-Craft to borrow money or obtain credit from any other source to purchase Piper stock was ever sought or adopted.

47(C). [Proposed by First Boston] Both before and after the close of Chris-Craft's cash tender offer, there were shares of Piper available at less than $65 a share on the open market which Chris-Craft did not purchase.

Revised 12/15/70

48. [Proposed by Chris-Craft] At the Piper annual meeting on February 4, 1969, Chris-Craft voted approximately 545,000 shares of Piper, pursuant to cumulative voting, to elect representatives to Piper's Board of Directors. Piper contested Chris-Craft's right to vote such shares and Chris-Craft contested Piper management's right to vote shares. Each instituted a series of challenges before the Judges of Election in an attempt to prevent the other's shares from being counted. Piper and two of its directors instituted an action alleging unlawful proxy solicitation against Chris-Craft, Messrs. Siegel, Rochlis, Gordon and Barnett and the Judges of Election to enjoin the Judges of Election, who had been designated by the Piper Board of Directors, from counting all proxies presented by Chris-Craft at Piper's 1969 shareholders meeting, enjoining Chris-Craft, Rochlis and Gordon to withdraw the votes cast by them at them at Piper's 1969 annual meeting and enjoining the Chris-Craft nominees from attending meetings of the Piper Board or from otherwise acting as directors of Piper.

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48A. [Proposed by Piper] On March 11, 1969, Piper sent to all Piper shareholders the following letter over the signature of defendant W. T. Piper, Jr.:

288 A

Piper Aircraft Corporation

Lock Haven, Pennsylvania 17745

March 11, 1969

DEAR SHAREHOLDER:

The Annual Meeting of Shareholders of Piper Aircraft Corporation, originally convened on February 4, 1969, was recessed to enable the Judges of Election to tabulate the results of balloting for directors. In accordance with management's Proxy Statement, the eight incumbent directors of your Company were nominated for reelection. In addition, four other persons not supported by management were nominated by representatives of Chris-Craft Industries, Inc. As provided by the By-Laws of your Company, directors are to be elected through cumulative voting.

Due to the number and significance of the challenges and objections presented by each side to the voting of certain proxies, the results of the balloting have not as yet been determined and the meeting continues to be in recess. The Judges of Election, who are representatives of The Corporation Trust Company, will prepare and submit their written report on the outcome of the voting as soon as practicable. Also, it is important for you to know that your Company, joined by myself and a member of the management proxy committee, has filed suit in the federal district court in Pennsylvania seeking a determination of serious questions as to the validity of the proxies sought to be voted by Chris-Craft.

We will advise you further as soon as the Judges of Election have completed their duties and submitted their final report.

Sincerely,

PIPER AIRCRAFT CORPORATION

W. T. Piper, Jr.

W. T. Piper, Jr.
President

49. [Proposed by Chris-Craft] On March 25, 1969, the judges of election permitted Chris-Craft to vote 365,000 shares and declared C. Leonard Gordon and James J. Rochlis, Chris-Craft's representatives, to have been elected directors of Piper. At a meeting of the newly-elected Piper Board of Directors subsequently on the same date a new Executive Committee was appointed by a vote of six to two consisting of the five officer-directors of Piper and not including the two Chris-Craft directors who opposed the appointment of such an Executive Committee.

49A. [Proposed by Piper] The minutes of Chris-Craft's Board of Directors meeting dated February 7, 1969 reflect the following:

> "A discussion was held on the desirability of an exchange offer to the holders of the Common Stock of Piper Aircraft Corporation for additional shares of such stock in exchange for a series of Preferred Stock and Warrants of this Corporation. After a full discussion, it was determined that the action of Vice President, C. Leonard Gordon in commencing the preparation of appropriate documents for such an exchange offer be approved but it was the consensus that no definitive action be taken at this time."

49B. [Proposed by Piper] On February 14, 1969, Chris-Craft's Board of Directors approved the making of an exchange offer to Piper shareholders and provided:

> "that the Chairman of the Board and President of the Corporation be, and he hereby is, authorized to determine at any time hereafter that the Exchange Offer is not advisable and in the best interests of the Corporation and to decide on behalf of the Corporation not to proceed with the Exchange Offer or to accept for exchange more than 300,000 shares of Piper Common Stock".

50. [Proposed by Chris-Craft] On February 27, 1969 Chris-Craft filed a Form S-1 registration statement and preliminary prospectus with the SEC for an exchange offer to Piper shareholders (the "Chris-Craft exchange offer") to exchange certain of Chris-Craft's securities for a minimum of 80,000 and up to 300,000 Piper shares, with the right at Chris-Craft's option to accept all or any part of the additional shares tendered.

51. [Proposed by Chris-Craft] Between February 20, 1969 and March 14, 1969, Castanea Realty Company, Inc., a corporation in which W. T. Piper, Jr. owned 25% of the stock, and with his brothers Howard Piper and Thomas Piper held the remaining 75% as trustees for grandchildren of W. T. Piper, purchased 16,525 shares of Piper stock on the NYSE. No Schedule 13D was ever filed with respect to these pruchases. They were first reported in the filing of Forms with the SEC by W. T. Piper, Jr. on April 25, 1969.

ALL

52. [Proposed by Chris-Craft] On March 22, 1969 Piper entered into the following written agreements signed on behalf of Piper by William T. Piper, Jr.:

(a) An agreement with United States Concrete Pipe Company ("U.S. Concrete") and Pittsburgh Coke & Chemical Company ("Pittsburgh Coke") which provided for the acquisition by Piper of all of the outstanding shares of their subsidiary, United States Concrete Pipe Company of Florida ("U.S. Concrete Florida"), in exchange for 320,000 shares of authorized but unissued shares of Piper common stock;

(b) An agreement with certain shareholders of SouthPly, Inc. ("SouthPly") which provided for the acquisition by Piper of 99.466% of the outstanding shares of SouthPly in exchange for 149,199 shares of authorized but unissued Piper stock.

52A. [Proposed by Piper] The agreements described in Finding 52 were approved by Piper's Board of Directors on March 22, 1969 after First Boston had given Piper written opinions that the terms of the proposed purchases were fair and equitable to the Piper shareholders.

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53. [Proposed by Chris-Craft] Piper reported in its form 8-K for the month of March 1969 that the two persons holding 80% of the outstanding stock of SouthPly were, respectively, the nominee and 79%-held subsidiary of Hillman Coal & Coke Company and that approximately 90% of Hillman Coal & Coke Company was owned by Hillman Land Company, a corporation controlled by Henry L. Hillman and substantially all the balance was owned by members of Mr. Hillman's family. Mr. Hillman was also the Chairman of the Board and President of Pittsburgh Coke & Chemical Company.

54(A). [Proposed by First Boston] First Boston did not bring Southply to Piper's attention. In early February, a Mr. Rose of the Pittsburgh National Bank called Piper directly and advised it Southply was for sale.

54(B). [Proposed by First Boston] U.S. Concrete came to Piper's attention when a Mr. Hillman, President of Pittsburgh Coke & Chemical, a long standing client of First Boston, called Mr. Miller without prior solicitation and advised him that Pittsburgh Coke & Chemical would like to propose U.S. Concrete as a possible acquisition for Piper Aircraft. Mr. Miller communicated this to Mr. Bayard, who passed it along to Piper.

54(C). [Proposed by First Boston] Thereafter, representatives of Southply and U.S. Concrete met with Piper management. First Boston attended the meeting, and was asked by Piper management to express an opinion whether the terms of the U.S. Concrete and Southply proposals were fair and equitable to Piper shareholders. Pursuant to this request, First Boston sent representatives to visit both companies, prepared analyses of the proposals and on March 22 rendered an opinion that the terms were fair and equitable to Piper shareholders.

55. [Proposed by Chris-Craft] The 149,199 shares which Piper issued for the stock of SouthPly, at the closing price on the NYSE on March 21, 1969 of 69-3/4 equalled $10,406,630.25. SouthPly's net worth as of December 31, 1968 was minus $10,582, and it had sustained net losses in 1968 of $58,499, and in 1967 of $529,671.

55A. [Proposed by First Boston] The sellers warranted that if SouthPly's earnings before taxes for the year ended December 31, 1969 were less than $900,000 the sellers would pay or cause to be paid to Piper an amount not to exceed $5,000,000 as determined by a formula set forth in the agreement.

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56. [Proposed by Chris-Craft] Piper's sole remedy for breach of the sellers' warranty for SouthPly's earnings for the year ended December 31, 1969 was the payment of up to $5,000,000 to be determined according to a formula contained in the agreement.

57. [Proposed by Chris-Craft] The 320,000 shares of Piper stock which Piper issued for U.S. Concrete Florida, at the closing price on the NYSE on March 21, 1969 of 69-6 equalled $22,320,000. In its 1968 Annual Report dated March 21, 1969, Pittsburgh Coke stated that the value of U.S. Concrete of which U.S. Concrete Florida was a subsidiary, based on the underlying net assets of the company as shown on its books, was $16,535,000. The report also stated that:

> "Due to the sizeable percentages of ownership in several of these companies or other conditions associated with ownership or transfer, attempted disposition of the Company's interests therein might well result in a realization of less than the values so given."

58. [Proposed by Chris-Craft] Under Piper's listing agreement with the NYSE, application for listing of additional amounts of securities was to be made "sufficiently prior to the issuance thereof to permit action in due course upon such application."

59. [Proposed by Chris-Craft] On March 24, 1969, the 320,000 shares to be issued for U.S. Concrete Florida represented 19.48% of Piper's then outstanding stock. The 149,199 shares to be issued to the sellers of SouthPly represented 9.1% of Piper's then outstanding stock.

The N.Y.S.E. Company Manual, issued by the NYSE, stated the following:

[Quote from Manual]

60. [Proposed by Chris-Craft] On the morning of March 24, 1969, Piper filed a listing application with the NYSE for the 320,000 shares of Piper stock to be issued in exchange for U.S. Concrete Florida and another listing application for the 149,199 shares of Piper stock to be issued to the sellers of SouthPly. The approval of Piper's shareholders for either transaction was not sought. After filing these listing applications, Piper, on March 24, 1969, issued 320,000 shares of Piper stock in exchange for U.S. Concrete Florida and 149,199 to the sellers of SouthPly. Piper itself issued certificates to U.S. Concrete and the shareholders of SouthPly. The NYSE never approved the listing applications for said shares.

62. [Proposed by Chris-Craft] On April 3, 1969, after Chris-Craft had protested the U.S. Concrete and SouthPly transactions to the NYSE, the NYSE Board of Governors directed that trading in Piper's stock be suspended effective April 7, 1969 and authorized the filing of an application to delist with the SEC, and announced that Piper had violated its listing agreement by the issuance of these shares, that Exchange policy required stockholder approval of the issuance of these shares and that no such approval had been obtained.

62A. [Proposed by Piper] On April 3, 1969, The Chris-Craft sent out a notice of meeting and proxy statement to its shareholders in connection with a special meeting of shareholders called for April 28, 1969 to vote on changes in Chris-Craft's capitalization. The proxy statement stated, at page 3:

> "Chris-Craft presently has no plans (except with respect to a possible exchange offer for shares of common stock of Piper Aircraft Corporation, which offer, if made, will be submitted to a vote of shareholders at a separate meeting called for that purpose) or pending negotiations for the issue of any of its authorized but unissued shares of common stock . . ."

63. [Proposed by Chris-Craft] On or about April 14, 1969 Piper and the sellers rescinded the U.S. Concrete and SouthPly transactions and, effective April 21, 1969, the NYSE ended its suspension of trading in Piper stock.

63A. [Proposed by Piper] The agreements described in Finding 52 were made and rescinded subsequent to the completion of Chris-Craft's cash tender offer and prior to the effective date of Chris-Craft's exchange offer -- May 15, 1969.

63D. [Proposed by Piper] On April 18, 1969, Piper sent to all Piper shareholders the following letter over the signature of W. T. Piper, Jr.:

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Piper Aircraft Corporation

Lock Haven, Pennsylvania 17745

April 18, 1969

Dear Shareholder:

As reported to you in our last letter, the Annual Meeting of shareholders, originally convened on February 4, 1969, had been adjourned to enable the Judges of Election to determine the results of the balloting on the election of directors.

On March 25 the meeting was reconvened and the Judges submitted their report showing the election of the following directors for the forthcoming year: William T. Piper, Sr., Howard Piper, Walter C. Jamouneau, Charles W. Pool, Thomas F. Piper, W. T. Piper, Jr., C. Leonard Gordon and J. J. Rochlis. R. K. Grillin and Norman Greene, who each had ably served as a director for nearly 20 years, surrendered their seats on the Board as a result of cumulative voting.

Following the shareholders' meeting your Board of Directors held its annual organizational meeting. At that meeting William T. Piper, Sr., founder of Piper Aircraft, announced his retirement as Chairman and a director. The Board of Directors thereupon unanimously adopted the following resolutions marking this occasion.

"RESOLVED, that whereas William T. Piper, Sr. did found this Corporation in the year 1937 and has presided over its affairs with genius and energy, so as to bring it to its preeminent place today in General Aviation, this Board of Directors does hereby elect him its Honorary Chairman of the Board and a Director Emeritus whose wisdom and counsel will be sought by this Board of Directors for so long as he holds those high titles; and further

"RESOLVED, that this Board of Directors declares its gratitude to William T. Piper, Sr. for more than thirty-one years of faithful and invaluable service to this Board of Directors, to the Officers and employees of this Corporation and to all its shareholders; and further

"RESOLVED, that the Secretary of this Corporation is directed to inscribe the foregoing resolutions in a suitable and permanent manner for presentation to William T. Piper, Sr. at a meeting of this Board of Directors."

As announced in the press, on March 22, 1969 Piper Aircraft had arranged to acquire United States Concrete Pipe Company of Florida and SouthPly, Inc. both of which acquisitions were subsequently rescinded. Contrary to expectations, the New York Stock Exchange during this interval had asserted that it would not approve the listing applications filed by Piper Aircraft in connection with the shares of common stock to be issued to the former owners of the two companies. Dealings in common stock of Piper Aircraft on the New York Stock Exchange were then suspended effective April 7, 1969. Your Board of Directors acted promptly to rescind the transactions and as a result dealings on the New York Stock Exchange have been restored effective April 21, 1969. During the brief period of suspension trading in Piper Aircraft common stock continued on the Philadelphia-Baltimore-Washington Stock Exchange and in the over-the-counter market.

It is a pleasure to report that Piper Aircraft's sales in the quarter ended March 31, 1969 exceeded $29,000,000 and were the highest for any quarter in our thirty-two year history. Sales for the first six months of the current fiscal year are estimated at more than $50,000,000, also a record. Earnings figures for these periods are not yet available. However, a complete report of second quarter and six-month results will be released before the end of this month.

Sincerely,

W. T. Piper, Jr.

W. T. PIPER, JR.
Chairman and President

64. [Proposed by Chris-Craft] On May 7, 1969 Chris-Craft issued a press release stating, among other things, that its proposed exchange offer would provide for each share of Piper stock one share of new Chris-Craft $2 preferred stock, convertible into 2.4 shares of common and five year warrants to purchase two shares of Chris-Craft common stock at $25 a share. Chris-Craft's press release did not place a value on its exchange offer.

RC

65. [Proposed by Chris-Craft] On May 7, 1969, after the terms of Chris-Craft's exchange offer had been announced, First Boston's Trading Department told Mr. Laeri that this offer was worth at best between $70 and $74 per Piper share. First Boston prepared the following analysis of the value of the Chris-Craft offer:

"Market Premium

As shown below, each P share would receive securities of C having a present market value of approximately $71.14. This amount represents a premium of 3.1% over the bid price of 69 per share for P on May 6, 1969.

1 share of C $2.00 Convertible Preferred at 57.88	$57.88
2 warrants at $6.63	13.26
Value of Proposal Per Share of P	$71.14

Dividend Income

P's present indicated annual cash dividend amounts to $1.40 per share. The dividend income prior to conversion would increase from $1.40 per share to $2.00 -- an increase of 42.9%."

ACC

66. [Proposed by Chris-Craft] Bangor Punta and members of the Piper family entered into an agreement dated May 8, 1969, which provided that Bangor Punta would make a registered exchange offer (the "Exchange Offer") to the Piper family (who held 501,090 shares of Piper stock) of (a) 1 share of Bangor Punta common stock, (b) 12-year Series C Warrants to purchase 2.2 shares of Bangor Punta common exercisable at $55 per share, and (c) $15 principal amount of a new 5-1/2% 25-year convertible subordinated debenture (convertible at $55 per share) for each share of Piper.* The agreement further provided in Section 2(E):

> "[(a)] Beginning on the date hereof Bangor Punta [would] use its best efforts to acquire additional shares of Piper stock ("the Additional Shares") sufficient, when added to the number of shares of Piper Common Stock owned by Sellers and covered by this Agreement, to constitute Bangor Punta the holder of more than 50% of the outstanding shares of Piper stock. [(b)] As a part of such best

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* Pursuant to an agreement dated July 8, 1969, the interest rate of the debentures was increased to 6-1/4%.

efforts, Bangor Punta [would] take all steps necessary to make a further exchange offer to all holders of Piper Common Stock other than Sellers under which such holders [would] be entitled to exchange each share of Piper Common Stock held by them for Bangor Punta securities and/or cash having a value, in the written opinion of The First Boston Corporation, of $80 or more ("the Further Exchange Offer Value"). [(c)] If Bangor PUnta succeed[ed] in acquiring the Additional Shares and if in the written opinion of The First Boston Corporation the value of the Bangor Punta securities delivered . . . [to the Piper family] (the "Exchange Offer Value"), determined as of the opening date of such Further Exchange Offer, [was] less than $80, then Bangor Punta [would] promptly thereafter deliver to . . . [the Piper family] Bangor Punta securities and/or cash with a value in the written opinion of The First Boston Corporation equal to the difference between $80 and the Exchange Offer Value."

66A. [BP] (a) On January 24, 1969, Mr. Laeri of First Boston called Mr. Salgo. He asked whether Mr. Salgo was aware of the efforts by Chris-Craft to acquire Piper. Mr. Laeri said that First Boston was acting on behalf of Piper to find an alternative to Chris-Craft for Piper, and asked whether Bangor Punta would be interested. Mr. Salgo said probably Yes, and Mr. Laeri said he would include Bangor Punta on the list of possible proposals for Piper. Mr. Salgo was advised a few days later by Mr. Laeri that Piper was not interested in talking to Bangor Punta.

(b) In 1967, in connection with a proposed merger of the BAR and the Maine Central Railroad, the BAR had engaged First Boston to advise it as to an appropriate merger ratio and First Boston had advised it that in a combined company approximately 3/5 of the value would be attributable to the BAR.

66B. [BP] (a) On February 24, 1969, Mr. Gene Stickley of Piper, Mr. J. Lloyd of Arthur Young & Co., Piper's independent auditors, and Mr. Laeri had a meeting arranged by Arthur Young & Co. with Mr. Wallace of Bangor Punta for the purpose of familiarizing Piper with Bangor Punta and its management as a prospective merger candidate. At this meeting, Mr. Wallace stated that before Bangor Punta would even consider attempting to effect a merger between Bangor Punta and Piper, the Piper family would first have to obligate themselves unconditionally to sell their Piper shares to Bangor Punta. Between this meeting and the conversations in January between Mr. Laeri and Mr. Salgo, there had been no contact between Piper and Bangor Punta.

(c) Other than possibly a telephone conversation between Mr. Laeri and Mr. Salgo, there was no contact between Bangor Punta and Piper between February 24, 1969 and March 20, 1969. Mr. Salgo testified on deposition that he thought Mr. Laeri called him to advise that there was no deal with Grumman to inquire whether Bangor Punta was still interested. Mr. Salgo indicated Bangor Punta was still interested.

66C. [BP] At a meeting between Mr. Laeri, Chadbourne and Mr. Wallace on April 18, 1969 which had been arranged by Mr. Laeri on April 17th, Mr. Wallace understood, based on what he was told in the conversation with Mr. Laeri of April 17 and at the meeting on April 18, that the Piper family had decided to commit themselves to sell all their Piper shares to Bangor Punta provided acceptable terms could be negotiated. Mr. Wallace was also told that Piper was prepared to discuss a possible merger between Piper and Bangor Punta. At the meeting, Mr. Laeri proposed that Bangor Punta make a cash tender offer at approximately $80 per Piper share for approximately 300,000 shares to the Piper shareholders other than the Pipers and that the Pipers agree to sell their shares to Bangor Punta, if the tender offer was successful. No agreement was reached between the parties at this meeting.

The first meeting between Bangor Punta and members of the Piper family was arranged for the following Sunday, April 20, 1969, at the Yale Club in New York City.

66D. [BP] The meeting at the Yale Club took place on April 20, 1969. Present were: (1) Messrs. Wallace and Robertson, Hutchins and Flick for Bangor Punta; (2) Messrs. Laeri and Bayard for First Boston; (3) Messrs. Demming and Leather of Chadbourne; and (4) Messrs. William T. Piper, Jr., Howard Piper and Thomas Piper. At the meeting Mr. Wallace expressed Bangor Punta's interest in acquiring the Piper family's shares, to be followed by purchases of additional Piper shares including a cash tender offer to acquire more than 50% of Piper's outstanding shares provided the Piper family unconditionally commit themselves to sell their Piper shares to Bangor Punta. A possible merger between Piper and Bangor Punta was also discussed. Those members of the Piper family present stated they were unwilling to give Bangor Punta an option on their Piper shares and still hoped that the Piper family would be able to retain their stock ownership in Piper. Upon being so advised, Mr. Wallace told them Bangor Punta would not proceed and the meeting ended.

Contested by Chris-Craft only to the extent that it does not include the matters set forth in Finding 66D-1.

66E. [BP] On April 22, 1969, Mr. Laeri called Mr. Flick and told him the Pipers were now willing to consider supporting a merger with Bangor Punta by putting their own stock into some sort of an agreement. On April 25, 1969, Mr. Wallace called Mr. Laeri and told him that if they were going to have a meaningful discussion, Mr. Wallace wished to visit Piper, confer with their financial officers and get a better feel of their prospects and future programs. Mr. Wallace visited Piper at Lock Haven on April 30, 1969 and talked to production and financial personnel.

66F. [BP] Prior to the telephone call from Mr. Laeri to Mr. Flick on April 22, 1969, other than the matters referred to in Findings 66A, 66B, 66C and 66D, Bangor Punta had no connection, directly or indirectly, with either Piper, the Piper management, the Piper family or First Boston.

66G. [BP] Intensive negotiations on the form and terms of the proposed agreement between Bangor Punta and the Piper family got underway on April 28, 1969. At the outset, Bangor Punta proposed the option type agreement as described in Finding 86.

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66H. [BP] Between April 28 and May 6, 1969, negotiations on the option type arrangement continued with no final agreement.

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66I. [BP] On May 6, 1969, the form of transaction was changed by Bangor Punta to that as ultimately set forth in the May 8 Agreement.

66J. [BP] Negotiations on the composition of the Piper family package continued on May 7th. On the evening of May 7th at Mr. Wallace's apartment, Mr. Laeri and Mr. Wallace continued the negotiations of the financial terms of the May 8 Agreement and reached tentative agreement upon a package of Bangor Punta's securities to be offered to the Piper family. The proposed securities package consisted of one share of Bangor Punta common stock, Warrants to purchase two shares of Bangor Punta common stock and $15 principal amount of a Bangor Punta convertible subordinated debenture. First Boston stated it valued this package at between $70 and $72 per Piper share.

66K. [BP] On the morning of May 8, 1969, a meeting took place between Bangor Punta and certain members of the Piper family and the Piper family's legal and financial advisers. Mr. Laeri advised Mr. Wallace that the package of securities that they had discussed the preceding evening was unacceptable to the Piper family. Negotiations continued and Warrants for an additional 0.2 shares of Bangor Punta's common stock were added and the securities package as contained in the May 8 Agreement was agreed upon by Mr. Wallace and the members of the Piper family present who indicated they had obtained the approval of the terms by the members of the Piper family not present. Mr. Laeri stated First Boston was of the opinion that these adjustments did not change the value of the Piper family package which was between $70 and $72 per Piper share.

66L. [BP] (a) Under the May 8 Agreement, Bangor Punta acquired 501,090 shares of Piper Common Stock, or approximately 31% of the issued and outstanding shares of Piper from the Piper family. Bangor Punta also agreed, pursuant to Section 2(E) of said agreement quoted in Finding 66, to use its "best efforts" to acquire sufficient additional Piper shares to give it more than 50% of all the outstanding Piper shares, including making a registered exchange offering to all other Piper shareholders of a package of "Bangor Punta securities and/or cash having a value, in the written opinion of The First Boston Corporation, of $80 or more" in exchange for each Piper share. There was no agreement on the identity or amount of the securities that were to be included in the package to be offered to the Piper shareholders other than the Piper family. Mr. Wallace testified on deposition that he said to the Bangor Punta Executive Committee on May 6, 1969 that it was management's belief that an offer of common stock, some debentures and some warrants was the kind of securities package Bangor Punta had to offer to the Pipers and to the public. He also testified other securities were under consideration, such as preferred stock. Mr. Wallace stated at the May 6th Executive Committee meeting that management was still considering a cash tender offer and that a securities package was still under consideration and was subject to revisions. It was

anticipated by Bangor Punta, First Boston and the Piper family that it would take several months for Bangor Punta to process through the SEC a registration statement for its exchange offer to the Piper shareholders.

(b) The May 8 Agreement was entered into by Bangor Punta for the valid business purpose of attempting to effect a merger between Bangor Punta and Piper. (This does not constitute a concession by Chris-Craft that the provisions of the Agreement complied with the Securities Laws.)

67(B). [Proposed by First Boston] First Boston and Chadbourne participated in negotiations leading to the May 8 agreement. First Boston had no power to bind either Bangor Punta or the Piper family, and the agreement had to be approved by the parties.

69. [Proposed by Chris-Craft]. On May 8, 1969, Bangor Punta and Piper issued identical press releases which were disseminated through the means and instrumentalities of interstate commerce, which stated:

[Release Attached]

NEWS

BANGOR PUNTA
405 PARK AVENUE, NEW YORK, N.Y. 10022 / (212) PL 8-6900
CONTACT: JACK G. MILNE

FOR IMMEDIATE RELEASE

RECD-S.E.C.

MAY 14 1969

New York, N. Y., May 8 -- Bangor Punta Corporation and the Piper family have reached an agreement whereby Bangor Punta will acquire the Piper family's more than 500,000 share interest in Piper Aircraft Corporation.

William T. Piper, Jr., who is president of Piper Aircraft, and David W. Wallace, chief executive officer of Bangor Punta, jointly announced the agreement and said they regarded the agreement as a first step in a proposed consolidation of the two companies.

Under the agreement, the Piper family will receive a package of Bangor Punta securities for their shares of Piper Aircraft.

Bangor Punta has agreed to file a registration statement with the SEC covering a proposed exchange offer for any and all of the remaining outstanding shares of Piper Aircraft for a package of Bangor Punta securities to be valued in the judgment of The First Boston Corporation at not less than $80 per Piper share. The registration statement covering all securities to be issued will be filed as soon as possible and a meeting of the shareholders of Bangor Punta Corporation will be called for approval.

EXHIBIT B

(more)

Mr. Piper said that in view of Bangor Punta's long-standing policy of maintaining autonomy in the management of its operating companies, and the similarity of operating philosophies between the two companies, he and the Piper family would strongly support the merger and would recommend it to all shareholders.

Mr. Wallace said Bangor Punta welcomed the association with Piper Aircraft, its world-wide distribution, and its prestigious product name. He said the consolidation would align the Piper Aircraft name with other leading Bangor Punta companies, including Smith & Wesson, Starcraft Company, and Waukesha Motor Company.

Bangor Punta manufactures a wide variety of recreational vehicles including sailboats, houseboats, snowmobiles, campers, trailers and motor homes. A merger of Bangor Punta and Piper Aircraft would bring Bangor Punta into the light aircraft manufacturing business.

Sales of the combined companies would reach $450,000,000 in fiscal 1969, with approximately $180,000,000, or 40%, in the aircraft, recreational and leisure time fields.

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589JGM

EXHIBIT 7
P.2.

69R [BP] The public relations department of Bangor Punta prepared a draft of the May 8 Press Release. Bangor Punta representatives, including counsel, and counsel for Piper reviewed and revised the draft into its final version.

69C. [BP] (a) On October 1, 1968, the SEC received the following draft of a proposed press release from Bangor Punta together with a letter from Mr. Flick which requested the SEC's comments on both the wording of the release and on its overall suitability.

The Board of Directors of Bangor Punta Corporation today authorized a tender offer for all of the shares of common stock of X Corporation. The offer would have a market value of at least $32, consisting of a new subordinated debenture and Bangor Punta Common Stock, in exchange for each share of X Corporation common stock. The offer would be for all the common stock of X Corporation provided that at least 50% of such stock is tendered with the understanding that Bangor Punta would reserve the right to take whatever number of shares are tendered. The offer would not become effective until the Securities and Exchange Commission cleared a registration statement which Bangor Punta expects to file in approximately four weeks. Announcement of the planned tender offer was made at this time because of the NewYork Stock Exchan policy of timely disclosure.

On October 1, 1968, Bangor Punta was considering making a registered exchange offer to the shareholders of Harley-Davidson Motor Co.

(b) The staff of the SEC considered whether the proposed press release complied with the securities laws and regulations, in particular with Rule 135. The staff of the SEC concluded that the press release, except for the deletion of the last sentence and the insertion of language making it clear that the press release was not intended as an offer itself, did comply with Rule 135 and could be issued thereunder. The SEC staff stressed that it was not clearing any particular language, but it was Bangor Punta's understanding that with certain changes which had been suggested by the SEC staff, the release was acceptable to the SEC. The staff of the SEC did not advise Bangor Punta that the proposed press release violated the securities laws, or that it could not be issued to the public. The staff of the SEC did not request Bangor Punta to delete the following sentence from its proposed press release:

> "The offer would have a market value of at least $32 consisting of a new subordinated debenture and Bangor Punta Common Stock, in exchange for each share of X Corporation Common Stock."

(c) On October 1, 1968, the following press release was carried over the Dow Jones tape:

"New York, N.Y., Oct. 1 -- Bangor Punta Corporation's board of directors authorized today an exchange offer for any and all of the outstanding capital stock of Harley-Davidson Motor Co., Milwaukee, Wis., for a market value estimated by Bangor Punta of approximately $32.00 a share in Bangor Punta securities.

"Terms of Bangor Punta's offer would provide in exchange for each share of Harley-Davidson capital stock the following securities: $20 principal amount of a new Bangor Punta 7 1/4 per cent Subordinated Debenture, one-half of a new Warrant to purchase Bangor Punta Common Stock at $55 a share, and one-tenth of a share of Bangor Punta common stock.

"The exchange offer would be made only by means of a prospectus, which would be furnished to stockholders of Harley-Davidson Motor Co., subsequent to Bangor Punta receiving clearance from the Securities and Exchange Commission of a registration statement which it expects to file by October 31, 1968.

"Harley-Davidson is a manufacturer of two and three wheeled motorcycles for sport, transportation, police and commercial uses, both in the U.S. and abroad. Harley-Davidson also makes golf carts and commercial vehicles used as cargo and personnel carriers.

"For the year ended September 30, 1967, Harley Davidson earned $1,285,159 on sales of $ 4,803,000.

"Bangor Punta Corporation is a widely-diversified company with operating units in many industries, including public security equipment, pleasure boats, campers and trailers, fashion fabrics, energy systems and services.

"For the nine months ended June 30, 1968, sales and other revenue of Bangor Punta totaled $107,552,000. Bangor Punta's net income for the same period was $6,618,000, including a net gain on disposition of assets of $1,078,000."

(d) The SEC has no record of receiving prior to October 16, 1970, the final press release issued by Bangor Punta on October 1, 1968 concerning its exchange offer for Harley-Davidson. The Dow-Jones tape carried a report of that press release on October 1, 1968, and the SEC's Division of Trading and Markets, in the normal course of its duties, receives and monitors the Dow-Jones tape and did so on October 1, 1968. The staff of the SEC never asserted prior to May 9, 1969 that the press release violated Rule 135.

(e) (Proposed by Chris-Craft and the SEC) Bangor Punta did not apprise or seek the comments of the staff of the SEC prior to issuing the May 8 Press Release, a copy of which is attached to Finding 69.

(f) The SEC's customary procedure in cases where issuers sought comments on proposed press release was to advise the issuers that the releases were their responsibility and that the SEC gave no clearance to such documents; however, if the SEC saw any violations, it would so advise the issuers.

(g) The facts stipulated in this finding do not encompass discussion and communications between the SEC, its staff and issuers other than Bangor Punta, prior to May 9, 1969, concerning whether press releases which announce exchange offers and estimated dollar values of the securities to be offered in exchange were in violation of Section 5(c) of the Securities Act of 1933 and Rule 135 thereunder.

70. [Proposed by Chris-Craft] The May 8 press release was reported in newspapers throughout the country, including the Wall Street Journal of May 9, 1969, and the New York Times of May 9, 1969. Copies of the Wall Street Journal and New York Times articles are attached.

WALL STREET JOURNAL
NEW YORK, N. Y.

MAY 9 1969

Bangor Punta To Buy Big Block Of Piper Stock

Piper Family to Be Sellers; Pact Called a First Step Toward a Consolidation

Bangor to Seek All Shares

By a WALL STREET JOURNAL Staff Reporter

NEW YORK—Bangor Punta Corp., a frequent corporate suitor, said it agreed to acquire more than 560,000 shares or at least 20%—of Piper Aircraft Corp. common stock from the Piper family.

The agreement is intended as a first step toward consolidation of Bangor Punta and Piper, officials of both companies said. Bangor Punta also is preparing an exchange offer for all remaining Piper shares, the officials said.

The agreement marks the latest in a long series of efforts by Piper to prevent Chris-Craft Industries Inc. from gaining a controlling interest in the Lock Haven, Pa. airplane maker. Chris-Craft owns 556,206 Piper common shares and has made an exchange offer for 260,000 more, which would bring its holdings to more than 52%.

A Chris-Craft spokesman said yesterday that Chris-Craft would vigorously oppose the Piper-Bangor Punta agreement and any merger attempt. The spokesman said Chris-Craft's legal counsel considers the announcement "in violation of the Federal securities statues and Securities and Exchange Commission rules."

Under the agreement and the probable exchange offer terms, both the Piper family and other Piper shareholders would receive [illegible] Bangor Punta securities for their Piper shares. The announcement said Bangor Punta's exchange proposal will offer [illegible] be tax-free to Piper shareholders, in the form of Bangor Punta convertible preferred stock. Piper shares would be exchanged for [illegible] Bangor Punta preferred, the announcement said.

Piper shares closed yesterday on the New York Stock Exchange at $31.50, up $1.50, on heavy trading. Bangor Punta shares rose $1.375 to $31.125 in Big Board trading. Chris-Craft common fell $2.25 to $44.50.

Chris-Craft Offer

On Wednesday, Chris-Craft announced terms of its offer to acquire 260,000 additional Piper shares. The offer is to exchange one share of new Chris-Craft $2 preferred and warrants to buy two shares of Chris-Craft common for each share of Piper held. Each warrant entitles holders to buy one share of Chris-Craft at $25 on or before June 1, 1971. The Chris-Craft preferred is convertible into 2.4 shares of Chris-Craft common between June 1, 1970 and June 1, 1979. The preferred is redeemable at $65 a share after June 1, 1970, is entitled to one vote per share, and is entitled to $65 a share up on liquidation.

Piper sought previously to block the Chris-Craft bid for control by attempting to sell 500,000 shares of Piper unissued common to Grumman Aircraft Engineering Corp., but this plan was dropped after court opposition by Chris-Craft.

Later, Piper sought to acquire U.S. Concrete Pipe Co. of Florida and SouthPly Inc. in exchange for 470,000 Piper treasury shares. This plan, too, was dropped after the New York Stock Exchange suspended trading in Piper common April 7 on the ground that proper stockholder approval hadn't been secured. Trading in Piper common was resumed April 21.

Noting that the Grumman, U.S. Concrete and SouthPly agreements were terminated, the Chris-Craft spokesman said, "In most ball games three strikes is out."

"We're perfectly serious, and we don't think this is a baseball game," retorted David W. Wallace, Bangor Punta's president and chief executive officer.

In a joint announcement, Mr. Wallace and William T. Piper Jr., Piper's president, said a registration statement covering all securities to be issued would be filed with the Securities and Exchange Commission as soon as possible and a meeting of Bangor Punta shareholders will be called for approval.

Mr. Piper said he and the Piper family would strongly support merger of the two concerns and would recommend it to stockholders.

In Big Board trading yesterday, Bangor Punta common advanced $1.375 to $31.125, while Chris-Craft common fell $2.25 to $44.50.

Earnings Were Steady

In the six months ended March 31, Piper earned $2.7 million, or $1.66 a share, the same as in the year-earlier period. Sales were $51.4 million against $49.8 million. The 1968 figures are restated to reflect the Federal income tax surcharge. Piper said a change in the method of computing depreciation increased the 1969 earnings by seven cents a share.

Bangor Punta, in the first fiscal quarter ended last Dec. 31, earned $3 million, or 75 cents a share, on sales of $83.8 million, against net of $1.4 million, or 52 cents a share, on volume of $59.4 million a year earlier. The company had 4,015,000 shares outstanding in the [illegible] quarter against 2,697,000 a year earlier. The figures assume full conversion of all [illegible] and of convertible notes. They [illegible] Wallace-Murray Corp. and Canton Oil Co., which were acquired.

[illegible] Bangor Punta [illegible] a [illegible] Piper [illegible]

[illegible] Piper [illegible] a [illegible] Co.

Bangor Punta agreed to buy a 20% interest in Piper Aircraft from the Piper family for securities valued at about $39 a Piper share. The diversified concern said it plans an exchange offer for the remaining Piper shares. This would rival a current bid by Chris-Craft Industries to boost its Piper holdings to more than 52%, a move Piper is fighting.

(Story on Page 31)

The New York Times
NEW YORK, N. Y.

MAY 9 1969

Pepsico to Buy Miller Brewing; Piper and Bangor Punta to Join

Deal With Grace Set

By LEONARD SLOANE

Pepsico, Inc., confirmed yesterday its interest in the Miller Brewing Company by announcing an agreement in principle to buy 53 per cent from W. R. Grace & Co.

The joint announcement by Pepsico and Grace stated that the purchase price was $120-million in cash and notes. About 32 months ago, Grace bought majority control of Miller for $36-million in cash and stock from Mrs. Lorraine Mulberger, a descendant of the founder, and her family.

Yesterday three-paragraph statement from the two companies came in contrast to their reaction Wednesday when asked about a report of the sale of Miller. Then, a Grace spokesman, citing month-long rumors of the sale of its Miller stock, asserted: "We have no deal with Pepsico."

Officers of Pepsico were unavailable after its annual meeting in Wilmington, Del., at which the proposed purchase was not mentioned. And Miller, which had no comment yesterday, had nothing to say on Wednesday either.

The remaining 47 per cent of Miller is owned by Deltance, Inc., a charitable foundation organized by members of the Miller family. It is not involved in the sale, although there were rumors earlier this

Continued on Page 75, Column 5

Family to Sell Shares

By JOHN J. ABELE

The fight for control of the Piper Aircraft Corporation took a new turn yesterday with an announcement that the Bangor Punta Corporation had agreed to acquire over 500,000 shares of Piper Aircraft stock held by members of the Piper family.

The agreement was announced by William T. Piper Jr., president of Piper Aircraft, and David W. Wallace, chief executive officer of Bangor Punta, a highly diversified company with interests in law enforcement products, textiles, agricultural and industrial equipment and leisure-time products.

The two executives said they regarded the agreement as "a first step in a proposed consolidation of the two companies."

Bangor Punta said it would exchange a package of its securities for the holdings of the Piper family and then would make an exchange offer for the remaining outstanding shares that would be valued "at not less than $80 per Piper share."

Piper stock closed on the New York Stock Exchange yesterday at $71.50 a share, up $1.50.

The Lock Haven, Pa., manufacturer of light aircraft has been trying for several months to avoid a takeover attempt by Chris-Craft Industries, which claims to own 556,206 shares

Continued on Page 56, Column 4

CONTAINER TAKE-OVERS CONTAINS TRAP FOR BERGER ACTIONS

Continued From Page 63

of Piper stock, or about 34 per cent of the 1,642,609 shares outstanding.

Earlier this week, Chris-Craft disclosed terms of an exchange offer it plans to make for an additional 300,000 shares of Piper, which, it said, would give Chris-Craft 52.15 per cent of Piper's stock.

In January, soon after Chris-Craft's interest in Piper was disclosed, Piper agreed to sell 300,000 shares of its authorized but unissued stock to the Grumman Aircraft Engineering Corporation. The deal was later canceled.

Chris-Craft Is Critical

In March, Piper announced two acquisitions involving the exchange of 470,000 shares of its stock. The acquisitions were later rescinded after the Stock Exchange suspended trading in Piper stock because the company had failed to secure that exchange's approval for listing of the additional shares.

The agreement between Bangor Punta and the Piper family was attacked yesterday by a spokesman for Chris-Craft who said the announcement was "manipulative and in violation of the Federal securities statutes and the rules of the Securities and Exchange Commission."

The spokesman said the proposal would be "vigorously opposed" by Chris-Craft.

Mr. Piper said he and the members of his family would "strongly support" a merger with Bangor Punta and would recommend such a move to the stockholders of Piper Aircraft.

Bangor Punta said the valuation of its exchange offer of $80 for each share of Piper represented the opinion of the First Boston Corporation.

The company also said a registration statement for the securities involved in the proposed exchange offer would be filed with the Securities and Exchange Commission as soon as [illegible]

71. [Proposed by Chris-Craft] References to the $80 a share figure appeared in the following articles subsequent to May 9. An article which appeared in the Wall Street Journal on May 19, 1969 included the following:

> "Setting Minimum Value
>
> On Friday, David W. Wallace, Bangor Punta president and chief executive, disclosed that under terms of Bangor Punta's agreement with the Piper family, First Boston Corp., an investment banking firm, 'must be satisfied' that the value of Bangor Punta's exchange offer is at least $80 a share. The agreement is in the form of a signed contract, Mr. Wallace added in response to a question."
>
> * * *
>
> "'The Piper management and family are behind us 100%, both as to the exchange offer and the future of Piper,' Mr. Wallace said Friday. He said Bangor Punta's exchange offer will be filed with the SEC 'as soon as possible.' Terms of the proposal haven't been announced, except that it will have a value of at least $80 a share."

An article which appeared in the Wall Street Journal on July 18, 1969 prompted by a letter from Messrs. Gordon and Rochlis to Piper shareholders concerning provisions of the May 8 agreement quoted in Finding 66"c" stated, in part:

> "Piper said that the general exchange offer to all Piper shareholders other than certain members of the Piper family originally was valued at $80 a share. The specific arrangement between the Piper family and Bangor Punta was

> worth less than $80 a share at the time it was concluded and is worth even less now, on the basis of current market values, the Piper spokesman said."

Bangor Punta was called by the Wall Street Journal reporter and said that it had no comment on the matter, which was stated in the article.

71A. [Proposed by Piper] (a) The quotation from the Wall Street Journal article of July 18, 1969 was the result of a telephone call from a Wall Street Journal reporter to Piper's counsel on July 16, 1969. The reporter called Piper's counsel and briefly told him about the allegation made by Messrs. Rochlis and Gordon in their letter to Piper shareholders concerning an alleged private deal between the Piper family and Bangor Punta for additional consideration, and asked if there was any such deal. Piper's counsel pointed out, among other things, that the details of the contractual arrangement for additional consideration for ~~[redacted]~~ the Piper family ~~and Bangor Punta~~ had been thoroughly spelled out in Bangor Punta's registration statement and preliminary prospectus which had been on file since the end of May.

71B. [Proposed by Piper] The SEC was advised of the circumstances referred to in Finding 71A, since Piper's counsel wrote the attached letter to the SEC on July 17, 1969 concerning the press reports. After receipt of the letter, the SEC made no further inquiry concerning the matter.

CHADBOURNE, PARKE, WHITESIDE & WOLFF
25 BROADWAY, NEW YORK, N. Y. 10004
DIGBY 4-5000

WASHINGTON, D. C. OFFICE
ONE FARRAGUT SQUARE SOUTH
20006

345 A

COPY

July 17, 1969

W. Thomson von Stein, Esq.
Securities and Exchange Commission
Room 407
500 North Capitol Street, N.W.
Washington, D.C. 20549

Dear Mr. von Stein:

This will confirm our telephone conversation today wherein you asked me about certain statements appearing on the Dow-Jones broad tape of yesterday and in The Wall Street Journal today.

I did receive a call from Mr. Tom Erick of The Wall Street Journal's office in Pittsburgh yesterday afternoon about 5:00 p.m. He briefly told me about an allegation made by Messrs. Rochlis and Gordon in a letter to Piper shareholders concerning an alleged private deal between the Piper family and Bangor Punta Corporation for additional consideration and asked if there was any such "secret" deal. I pointed out to Mr. Erick that the details of the contractual arrangement between the Piper family and Bangor Punta had been spelled out in Bangor Punta's registration statement that had been on file since the end of May and that the preliminary prospectus containing such information had been sent to all Piper shareholders. Having firmly in mind the SEC's concern about a characterization of value of any securities package, at no time did I state that the value of the securities package to be offered by Bangor Punta under the general exchange offer was $80 a share. All my comments on the telephone to Mr. Erick were limited to the contractual right of the Piper family to receive additional securities and/or cash in the specified circumstance.

Very truly yours,

DLD:ma

Donald L. Demmin

Except as indicated in Finding 71, Chris Craft doesn't contest Piper's representation that the press release was issued

71C. [Proposed by Piper] At no time after May 8, 1969 did Piper or the Piper defendants [~~refer to~~ or] make any public statements with respect to the $80 minimum value provision of the May 8th agreement, nor did they request anyone else to do so.

~~[Contested by Chris-Craft only as indicated in Findings 71 and 71A.]~~

71D. [BP]

(a) Chris-Craft does not contest the representation by Bangor Punta that other than the May 8 press release and the interview of Mr. Wallace by a Wall Street Journal reported on May 16, 1969, Bangor Punta did not make any public statement that the package of securities to be offered to the public by Bangor Punta in its proposed exchange offer was to have a value of at least $80 per Piper share in the opinion of First Boston.

(b) No Bangor Punta securities were sold by Bangor Punta between May 8, 1969 and August 7, 1969.

72. [Proposed by Chris-Craft] The May 8, 1969 press release was issued before all of the Piper family signatories had signed the May 8 agreement, but after W. T. Piper, Jr., Howard Piper and John Piper had contacted certain members of the Piper family and W. T. Piper, Jr. had advised Bangor Punta that the agreement was acceptable and would be signed by all members of the Piper family. By about May 20, 1969 all members of the Piper family had signed the agreement.

73. [Proposed by Chris-Craft] The May 8, 1969 press release was issued prior to the filing of any registration statement by Bangor Punta for the exchange offer to the shareholders of Piper contemplated by the May 8 agreement. Bangor Punta filed its registration statement for its exchange offer on May 29, 1969.

73C. [BP] On May 16, 1969, Bangor Punta filed in the public files of the New York Stock Exchange and the Securities and Exchange Commission the annexed Schedule 13(d), which described the details of the May 8 Agreement including the obligation of Bangor Punta to offer to the Piper shareholders, other than the Piper family, a package of its "securities and/or cash having a value, in the written opinion of The First Boston Corporation of $80 or more." Bangor Punta could have filed the Schedule 13(d) Statement on May 8, 1969.

S C H E D U L E 13D

SECURITIES AND EXCHANGE COMMISSION

Washington, D. C. 20549

Statement Pursuant to Rule 13d - 1

BANGOR PUNTA CORPORATION
(Exact name as specified in charter)

DELAWARE	51-0041390
(State of incorporation or organization)	(IRS tax number)
405 Park Avenue, New York, New York	10022
(Address of principal executive offices)	(Zip Code)

em 1. - Security and Issuer.

This statement relates to the Common Stock par value $1.00 r share issued by Piper Aircraft Corporation ("Piper") whose address Lock Haven, Pennsylvania 17745.

em 2. - Identity and Background.

2.1(a),(c) and (d) This statement is being filed by Bangor nta Corporation ("Bangor"), a Delaware corporation whose principal fice is located at 405 Park Avenue, New York, N. Y. 10022. Bangor nta is a diversified holding company with operating subsidiaries in e following industries: leisure time (pleasure boats, camping trai- ers, automatic jewelry) public security; energy systems; process gineering and equipment; fashion fabrics; agribusiness; services; d transportation.

The Bangor & Aroostook Railroad was organized in 1891 and ntil 1961 was engaged principally in the railroad business. In 1960 he Railroad caused the Bangor & Aroostock Corporation to be organized. s a result of an exchange offer made by the latter company in 1961, t acquired almost all of the stock of the Railroad. Bangor & Aroo- took Corporation then diversified, acquiring four subsidiaries in ddition to the Railroad, prior to being acquired in turn by Punta legre Sugar Corporation in 1964. Punta Alegre, incorporated in Dela- are in 1932, had engaged in the sugar business until the expropriation f its Cuban assets by the Castro regime. Subsequent to the expro- iation it had entered into other businesses through acquired subsi- iaries. As the result of its acquisition of the Bangor & Aroostock orporation, its name was changed to Bangor Punta Alegre Sugar Corpora- ion, which name was changed again, in 1967, to Bangor Punta Corporation

2.2 The name, residence, principal occupation, business address, principal business of company where occupation is carried on, material occupations during the last ten (10) years (including dates of such occupations, principal business and address of company where such occupation was carried on) for the directors and officers of Bangor Punta as follows:

NICOLAS M. SALGO, Chairman of Board of Directors since 1964 and a Director since 1961; Residence, 4 East 72nd St., N.Y., N.Y.10021; Since 1959 President of Nicolas Salgo & Co., Inc. (financial advisory services) 405 Park Ave., N. Y., N.Y. 10022; from 1961 to 1964 Director and from 1962 to 1964 Chairman of the Board of Directors of Punta Alegre Sugar Corporation (a predecessor of Bangor Punta); from 1960 to 1964 Director of Corporate Expansion of Bangor & Aroostook Corporation (a predecessor of Bangor Punta.)

WILLIAM C. DOUGLAS, Honorary Chairman of Board of Directors, Director since 1932; Residence, Parker Dorado, 3180 S. Ocean Drive, Hallandale, Florida 33009, retired since 1962; from prior to 1958 to 1962 Chairman of the Board of Directors and Chief Executive Officer of Bangor Punta.

W. GORDON ROBERTSON, Co-Chairman of Board of Directors; Chairman of Executive Committee, Board of Directors, Director since 1961. Residence, 81 Howard Street, Bangor, Maine 04401; from 1964 to April 1969 Chief Executive Officer of Bangor Punta;from 1964 to 1967 also President of Bangor Punta; from 1960 to 1964 President and Chief Executive Officer of Bangor & Aroostook Corporation (a predecessor of Bangor Punta); from 1957 to 1962 President and Chief Executive Officer of Bangor and Aroostook Railroad Company, 84 Harlow Street, Bangor, Maine 04401.

DAVID W. WALLACE, President and Chief Executive Officer, Director since 1967; from 1967 to April 1969 Chief Operating Officer; Residence, 39 East 79th Street, N. Y., N.Y. 10021; from 1958 to 1960 Vice President, Director and Member of the Executive Committee of Allegheny Corporation (a closed-end non-diversified management investment company), 350 Park Avenue, N.Y., N.Y. 10022; from 1960 to 1967 Executive Vice President, Director and Member of the Executive Committee of AMK Corporation (a diversified holding company), 245 Park Avenue, N.Y., N.Y. 10017.

W. JEROME STROUT, Director and Vice President since 1964; Residence, 36 Dunning Blvd., Bangor, Maine 04401; since 1962 President and from 1955 to 1962 Executive Vice President of Bangor and Aroostook Railroad Company, 84 Harlow Street, Bangor , Maine 04401.

HARRY S. BAKER, Director since February 1968; Residence,945 S. Clovis Ave.,Apt. 6F,Fresno, Calif.; since 1967 Chairman and, from prior to 1958 to 1967 President, of Producers Cotton Oil Company (a subsidiary of Bangor Punta and an integrated grower, processor, manufacturer and merchandiser of agricultural commodities) Post Office Box No. 1832, Fresno, California 93717

ROBERT L. CHAMBERS, Director since 1961; Residence, 180 Magnolia Drive, Atherton, California 94025; since February, 1968 Consultant to Bangor Punta and President of Robert L. Chambers Associates (corporate finance) Stanford Financial Square, 2600 El Camino Real, Palo Alto, California 94306; from 1959 to 1967 President of Bartlett-Snow-Pacific (a subsidiary of Bangor Punta); from 1962 to 1965 President of Pacific Metals Company (a subsidiary of Bangor Punta) and from 1962 to 1964 President of Punta Alegre Sugar Corporation (a predecessor of Bangor Punta). In 1958 President of Magna Power Tool Corporation (manufacturer of power tools), which company is no longer in existence.

JAMES S. GARVEY, Director since 1967; Residence, 417 Rivercrest Drive, Fort Worth, Texas 76107; since prior to 1958 President of Garvey Elevators, Inc. (grain storage and marketing) 617 Fort Worth National Bank Building, Fort Worth, Texas 76102.

WILLIAM E. HILL, Director since 1964; Residence, 125 East 74th Street, New York, New York; since prior to 1958 President of William E. Hill Co., Inc. (management consultants) 640 Fifth Avenue, New York, New York.

CURTIS M. HUTCHINS, Director since 1964; Residence, 200 East End Avenue, New York, New York 10027; since prior to 1958 Chairman of Dead River Company (engaged in the distribution of petroleum products and management of timberlands) 200 Park Avenue, New York, New York 10017, and from 1960 to 1963 President St. Croix Paper Company (newsprint manufacturer), Bangor, Maine.

GEORGE S. JONES, Director since 1952; Residence, 64 Woodfield Drive, Short Hills, New Jersey; since prior to 1958 Limited Partner Wertheim & Co., (investment bankers) One Chase Manhattan Plaza, New York, New York 10015.

FREDERICK H. KINGSBURY, JR., Director since 1956; Residence 655 Park Avenue, New York, New York 10021; since prior to 1958 Partner of Brown Bros. Harriman & Co., (bankers) 59 Wall Street, New York, New York 10015.

SCOTT K. LOWRY, Director since July 1968; Residence, 36024 South Beach Road, Oconomowoc, Wisconsin 53166; since prior to 1958 Member of the law firm of Lowry, Hunter & Tikalsky, 253 South Street, Waukesha, Wisconsin 53186.

DR. WALTER B. McKINNEY, Director since 1961; Residence, Winter Hill House, Apartment 1010, 20 West Evergreen Street, Chestnut Hill, Pennsylvania 19118; since 1967 President of Keystone Warehouse Company, 2769 Broadway, Buffalo, New York and of Tidewater Associates Inc., Chestnut Hill, Pennsylvania, and Chairman of Merchants Warehouse Company, 3535 South Tenth Street, Philadelphia, Pennsylvania 19148 (all of which are operators of tidewater terminals and warehouses). Prior to 1958 to 1967 President of Merchant Warehouse Company.

GEORGE H. SEAL, Director since 1964; Residence, 385 Ocean Avenue Marblehead Neck, Massachusetts; from prior to 1958 to 1962 Vice President, from 1962 to 1966 President and, since 1966, Chairman of C.H. Sprague & Son Company (engaged in the production, sale and distribution of fuels) 425 High Street, Boston, Massachusetts 02110

ROBERT G. STONE, Director since 1937; Residence, 214 Lowder Street, Dedham, Massachusetts; since prior to 1958 Limited Partner of Hayden Stone Incorporated (investment bankers and brokers) 25 Broad Street, New York, New York and since prior to 1958 active as a director and trustee of numerous corporations.

JAMES G. TREMAINE, Director since 1956; Residence, 528 Field Point Road, Greenwich, Connecticut; since prior to 1958 Partner Gude, Winmill & Co., (Member of New York Stock Exchange) One Wall Street, New York, New York.

HARRY C. WOOD, Director since 1964; Residence, Woodson Farms, Pennsburg, Pennsylvania; since 1962 President and, from prior to 1958 to 1962 Vice President of A.W. Benkert & Co., Inc. (securities analysts and dealers) 52 Wall Street, New York, New York 10005.

JOHN E. FLICK, Senior Vice President, General Counsel, and Secretary since August 1968; Residence, 21 Middlesex Road, Darien, Connecticut 06820; from 1967 to August, 1968 Vice President, General Counsel and Secretary of Bangor Punta; from 1963 to 1967 Divisional General Counsel, Director of Corporate Contracts and Assistant to General Counsel at Litton Industries, Inc. (a diversified holding company) 9370 Santa Monica Boulevard, Beverly Hills, California 90213. Prior to 1958 to 1963 officer, Judge Advocate Corps, United States Army.

STEPHEN GALLE, Senior Vice President since August, 1968; Residence, Garthwood Apartments, Scarsdale, New York; from 1967 to August 1968 Vice President of Bangor Punta; from 1964 to 1967 Vice President Bangor Punta Operations in an advisory capacity; also from 1960 to 1966 Treasurer of Nicolas Salgo & Co., Inc. (financial advisory services 405 Park Avenue, New York, New York; from prior to 1958 to 1960 Assistant Treasurer Goal Credit Corporation (lenders) 405 Park Avenue, New York, New York.

THOMAS D. STEPHENSON, Vice President and Treasurer since 1962; Residence, 178-10 Wexford Terrace, Jamaica, New York 11432; from 1958 to 1962 Assistant Secretary and Treasurer of Punta Alegre Sugar Corporation (a predecessor of Bangor Punta); in 1958 Assistant Secretary of Punta Alegre Sugar Corporation.

CARL E. DELANO, since August 1968 Vice President - Personnel; Residence, 220 East 63rd Street, New York, New York 10021; from 1967 to August, 1968 Assistant to Chief Executive Officer of Bangor Punta Railroad Company (a predecessor of Bangor Punta).

JACK G. MILNE, since June 1968 Vice President - Corporate Relations; Residence 4 Sussex Avenue, Chatham, New Jersey 17928; from January 1962 to June, 1968 Manager Public Relations for Bangor Punta; from prior to 1958 to January 1968 a Public Relations Manager with United Air Lines, 277 Park Avenue, New York, New York.

B. RICHARD WAKEFIELD, Vice President since July 1968; Residence, 33 Crescent Road, Riverside, Connecticut 06878; from prior to 1958 to 1960 and from 1962 to July 1968 Principal with Arthur Young & Co. (accountants), 277 Park Avenue, New York, New York; from 1960 to 1962 Vice President International Systems and Control Corporation (holding company) 1524 Maury Street, Houston, Texas.

MARC F. WRAY, Vice President since April, 1968; Residence, 440 East 79th Street, New York, New York 10021; since February 1968 Executive Vice President of ENESCO INC. (a subsidiary of Bangor Punta); from May 1964 to April 1968 Assistant Secretary of Bangor Punta; from September 1963 to May 1964 student at Harvard Graduate School of Business; from August 1960 to September 1963 Director of Planning and Controller of Jacksonville Paper Company (integrated paper manufacturer, converter and distribution company), Jacksonville, Florida; from June 1960 to August 1960, Consultant, Peat, Marwick, Mitchell & Co. (accountants), Chicago, Illinois; from 1958 to June 1960 self-employed as Independent Management Consultant.

Item 3. - Source and Amount of Funds or Other Consideration

Bangor Punta has agreed, subject to shareholder and regulatory approval, with the persons listed on Exhibit A to make an exchange offer for approximately 501,000 shares of Piper Common Stock on the basis of (i) 1 share of Bangor Punta Common Stock Par Value $1. per share, (ii) Warrants-Series C, expiring March 31, 1981 to purchase 2.2 shares of Bangor Punta Common Stock, and (iii) $15 face amount of a new 5-1/2% 25 year Convertible Subordinated Debenture for each such share of Piper Common Stock. The Common Stock will be from the authorized Common Stock of Bangor Punta, the Warrants will be issued under a Warrant Agreement dated February 28, 1969 between Bangor Punta and Irving Trust Company as Warrant Agent, and the Debentures will be issued under a proposed Debenture Indenture to be dated as of July 1, 1969 between Bangor Punta and Irving Trust Company as Trustee. See the answer to Item 4 as to a further exchange offer to be made to all other Piper stockholders.

Bangor Punta has acquired, in privately negotiated transactions 23,000 shares of Piper and Bangor Punta International Capital Company (Bangor Punta International) a wholly-owned subsidiary of a subsidiary of Bangor Punta, has acquired in privately negotiated transactions 60,600 shares of Piper and the right to acquire an additional 18,000 shares.

The source of the funds used for such privately negotiated transactions, in the case of Bangor Punta, was its general corporate funds (the amount so used was $1,718,000) and, in the case of Bangor Punta International, the source of such funds was, and will be, the proceeds of a Debenture offering made by Bangor Punta International in 1968 in the Eurodollar market and 20 day bridge financing from Swiss Bank Corporation, Geneva, Switzerland (the amount of funds

already used for such purpose was $1,277,450 from such Debenture proceeds and $3,572,550 from such bridge financing, and the amount to be used for the acquisition of such 18,000 shares to be acquired will be $1,440,000 from such Debenture proceeds and, if necessary, from additional bridge financing.

Item 4. - Purpose of Transaction.

Bangor Punta desires to acquire control of Piper. Pursuant to the agreement referred to in the answer to Item 3 Bangor Punta has agreed to seek shareholder and regulatory approval to make a further exchange offer for any and all remaining Piper stock on the basis of cash and/or securities having a value of at least $80. per share. Such value to be determined by the First Boston Corporation.

Pursuant to the proposed exchange offers, Bangor Punta hopes to acquire enough additional shares of Piper Common stock to give it a majority of such shares.

Under the law of the state of Pennsylvania, the state of incorporation of Piper, if Bangor Punta acquired a majority of the outstanding shares of Piper Common stock Bangor Punta would acquire the power to cause Piper to merge, consolidate, sell its assets or liquidate without concurrence of the remaining Piper Common stockholders; however, under certain circumstances any minority shareholder who dissented to such action would have appraisal rights provided under Pennsylvania law.

If Bangor Punta acquires such a majority interest, its present plan is to operate Piper as a division under its present management. However, Bangor Punta does not presently have the information available to it to make final plans as to these matters, or as to any other major changes in Piper's business or corporate structure. Any such final decision by Bangor Punta with respect thereto will depend upon, among other things, operational, tax,

financial and other corporate considerations.

Item 5. - Interest in Securities of the Issuer.

5.1 The number of shares of Piper which are beneficially owned by Bargor Punta is 83,600.

5.2 The number of shares of Piper which Bangor Punta has the direct or indirect right to acquire is approximately 519,000.

Other than as described in this Schedule 13 (d) no officer, director, or affiliate of Bangor Punta own shares of Piper Common stock , or have engaged in transactions concerning such shares during the last sixty (60) days.

Item 6. - Contracts, Arrangements, or Understandings with respect to Securities of the Issuer.

6.1 See the answers to Items 3 and 4 with respect to Bangor Punta's Agreement to make exchange offers for Piper shares. Such Agreement provides that Bangor Punta will receive proxies from the Piper shareholders that are parties thereto permitting certain officers of Bangor Punta to vote such shares under certain circumstances (the form of such proxy is attached hereto as Exhibit B). This Agreement also provides that, in the event, Bangor Punta acquires control of Piper and, if the value, as determined by The First Boston Corporation of the Bangor Punta Common stock, Warrants and Debentures to be offered in exchange for Piper stock to those Piper shareholders that are parties to the Agreement is less than $80 at the time of the commencement of the exchange offer to other Piper shareholders, then Bangor Punta will offer to the Piper shareholders that are parties to the Agreement additional securities and/or cash having a value (in the opinion of The First Boston

Corporation) equal to the difference between $80 and the value of such Common stock, Debentures and Warrants.

6.2 Bangor Punta International has an agreement with F.O.F. Proprietary Funds Ltd. providing for the purchase by Bangor Punta International of 18,000 shares of Piper stock at a cost to Bangor Punta International of $80 a share.

Item 7. - Persons Retained Employed or to be Compensated

Not applicable as this schedule is being filed on account of the acquisition by Bangor Punta of the right to acquire over 10% of the outstanding Common Stock of Piper. The exchange offers referred to in Items 3 and 4 will be the subject of a registration statement under the Securities Act of 1933.

Item 8. - Exhibits

Not applicable

Signature

I certify that to the best of my knowledge and belief, the information set forth in this Statement is true, complete and correct.

John E. Flick
General Counsel

Dated:

May 16, 1969

W. T. Piper, Sr.
Mrs. Clara S. Piper
Piper Investment Company
Castanea Realty Company, Inc.
The Piper Foundation Inc.
W. T. Piper, Jr.
Margaret Bush Piper
Mary P. Bolles
John S. and Mary P. Bolles
David D. Bolles
Jane Bolles Grimm
Sarah Bolles Conner
John Thomas Bolles
Mary P. Bolles, trust for John Thomas Bolles
J. C. Vincent, Jr. & P.P. Bolles,
trust for P.P. Bolles
Thomas F. Piper
Thomas F. and Margaret B. Piper
Thomas F. Piper, Jr.
Barbara F. Piper
John R. Piper
William H. Piper
Leena J. Piper
Howard Piper
Howard and Helen W. Piper
Helen W. Piper
David W. Piper
Patricia Piper Devonshire
Howard Piper, Jr.
Elizabeth P. Harford
Thomas J. Harford
Thomas J. Harford, Jr.
Elizabeth L. Harford
Jane L. Harford
Anne G. Harford
Mrs. Ione Taber Collins
Claire Collins Price
Mary C. Lederhouse
Norris E. Price
Mrs. Claire Taber Moore
John F. Moore
Thomas Martin Moore
Susan Moore Taylor

PROXY

I (We) hereby irrevocably appoint Nicholas M. Salgo, W. Gordon Robertson and David W. Wallace and each of them acting without the other as proxies with power of substitution to represent me (us) and to vote all my (our) stock in Piper Aircraft Corporation held by me (us) on any Record Date from the date hereof through December 31, 1971 in respect of any and all of the following matters that may come before any Annual Meeting or Special Meeting of the shareholders of Piper Aircraft Corporation, and at any adjournment or adjournments thereof:

1. Any matter, except the election or removal of directors, that is required by any provision of the Pennsylvania Business Corporation Law to be submitted to a vote of shareholders.

2. Any other matter, except the election or removal of directors, that is submitted to a vote of shareholders of Piper Aircraft Corporation, but only upon condition that the proxies appointed herein shall, at least 10 days prior to the date of the meeting at which such matter is to be voted upon, have notified the undersigned, in a writing addressed to him at his address then appearing on the transfer records of Piper Aircraft Corporation,

as to the manner in which such vote will be cast by the proxies appointed herein. The condition stated in the preceding sentence is hereby waived in respect of any matter of which the proxies appointed herein shall not have received written notice from Piper Aircraft Corporation at least 21 days prior to the date of the meeting at which such matter is to be voted upon.

This proxy is coupled with an interest and revokes any proxy heretofore given by the undersigned. Notwithstanding the foregoing, this proxy shall not be valid to vote at any Annual Meeting or Special Meeting of the shareholders of Piper Aircraft Corporation on any matter proposed by or on behalf of Bangor Punta Corporation unless either (A) the Board of Directors of Piper Aircraft Corporation shall have recommended to shareholders, in proxy materials distributed in management's solicitation of proxies, that shares be voted in favor of such proposal or (B) the proxies named herein shall have received an opinion of counsel that a vote in favor of such matters is not inconsistent with carrying out the provisions and intent of the Agreement dated May 8, 1969 to which Bangor Punta Corporation and the undersigned are parties with others.

Date: _____, 1969 _____

_____

Joint owners should each sign separately. All trustees must sign unless the trust instrument permits otherwise.

73D. [BF]

(a) As set forth in Finding 98, on May 29, 1969, Bangor Punta filed an S-1 Registration Statement providing for its proposed exchange offer to the Piper family and to the other Piper shareholders and a preliminary prospectus describing the proposed exchange offer was thereafter distributed to all Piper shareholders. On May 29, 1969 as an exhibit to this registration statement, a complete copy of the May 8 Agreement was filed in the public files of the SEC. The Schedule 13(d) and the copy of the May 8 Agreement filed with the Registration Statement were in the public files of the SEC and available to the general public.

75. [Proposed by Chris-Craft] John Flick, Bangor Punta's senior vice president, general counsel and secretary, and a participant in the preparation of the May 8 press release, was familiar with SEC Rule 135 at the time of the issuance of the May 8 press release.

76. [Proposed by Chris-Craft] On April 17, 1969 the Wall Street Journal reported the following on page 1:

• • •

Northwest Industries' proposed tender offer for B. F. Goodrich stock was cleared by the Securities and Exchange Commission. But the commission ruled that holders of the tire company are permitted until April 25 to withdraw any securities deposited for the offer. The SEC asserted Northwest unlawfully issued certain press releases about the offer prior to filing a registration statement.

(Story on Page 2)

• • •

At page 2 of that edition, the following story appeared:

SEC Clears Northwest Industries Offer For Goodrich, Alleges Illegal Disclosures

A WALL STREET JOURNAL News Roundup

The Securities and Exchange Commission cleared Northwest Industries' registration statement covering its proposed tender offer for B. F. Goodrich Co. stock. Goodrich vehemently opposes the bid.

But the commission asserted that Northwest Industries had violated Federal securities laws in issuing certain press releases about the offer.

The SEC noted in a brief announcement that the registration statement had become effective. However, it said that Northwest's prospectus will be furnished "promptly" to Goodrich shareholders who have received the offer, and ruled that such shareholders are allowed until April 25 to withdraw any securities deposited for the offer.

A securities expert in Washington said the effect of this is to prevent Northwest from obtaining any binding commitments from Goodrich shareholders until April 25. In the normal situation, an acquiring company can move immediately, and the prospectus isn't mailed until sometime after the commitment is made.

The SEC announcement called attention to disclosures in the Northwest prospectus indicating that the commission believed the Northwest press releases had violated the law. The SEC said it believed, the release of such information, prior to the time the registration statement was filed, "constituted an offering" contrary to Federal securities law.

Provision of Law

The legal provision mentioned by the SEC essentially prohibits companies from making an offer involving an exchange of stock until the offer has been registered with the commission. The SEC also said Northwest's prospectus discloses that the commission believes the information contained in the press releases went beyond an SEC regulation that specifies the type of information that may be published in a notice of a proposed offering.

The SEC said it was requiring that Goodrich shareholders have until April 25 to withdraw their securities "in order to disseminate the information in the registration statement and to dispel the effect of the alleged unlawful release of information."

While the SEC's action in clearing the registration statement apparently removes one Government hurdle for Northwest, the company may still face opposition from the Justice Department. The agency asked Northwest on March 28 to delay its proposed offer, and the company agreed.

At that time, the department said the proposal "raises very serious and substantial questions under Section 7 of the Clayton Antitrust Act." The department asked for a delay to complete its study of the offer and to "avoid possible serious repercussions in the market for those securities in the event of suit."

In Chicago, a spokesman for Northwest Industries said the company is "very pleased" that the long-awaited clearance of its registration statement by the SEC had occurred. The statement was filed by Northwest on Feb. 6. Northwest has previously said in reply to queries that it didn't know why the SEC had delayed its action.

The spokesman said printing and mailing of the prospectus may take a day or two.

Noting that the SEC had questioned Northwest's Jan. 20 announcement of its plan to make an offer for Goodrich, a Northwest spokesman said that "counsel has advised Northwest that such announcements were proper. Moreover, there has been no suggestion that the announcements were inaccurate in any respect."

A Northwest spokesman said the company has "heard nothing" from the Justice Department regarding its investigation of possible antitrust questions raised by the Goodrich take-over plan.

In Akron, a spokesman for Goodrich said the company "will have no response at this time."

Opposition From Goodrich

Goodrich has vigorously fought the Northwest proposal, announced Jan. 20, through a long series of legal, financial, public relations and lobbying maneuvers designed to halt or impede Northwest from making its offer. It is expected to continue the fight now that the offer is being made, perhaps through various actions before regulatory agencies and courts.

The company is understood to have contacted securities commissions in most states in an effort to obtain their aid in blocking the offer.

However, Thomas Nelson, Wisconsin securities commissioner, said yesterday that the Northwest offer has been approved in his state over Goodrich's complaint. Wisconsin is generally regarded as one of the strictest states in securities regulation. "As far as we know, the offer has been cleared in all states with the possible exception of Ohio," Mr. Nelson said, noting that Ohio is Goodrich's home state.

In Illinois, Thomas J. Hawekotte, securities commissioner, said that state has approved the Northwest securities to be offered.

Northwest is a holding company that owns the Chicago & North Western Railway, and a variety of other concerns. Goodrich is a big rubber, chemical and plastics producer.

Under terms of the proposed tender offer, Northwest would issue, in exchange for each Goodrich share, a package consisting of $25 principal amount of 7.5% subordinated debentures due in 25 years, 0.4 share of $4 convertible preferred stock, and a 10-year warrant to buy 0.3 share of Northwest common at $110 a share. The debentures could be used by holders at par value in exercising the warrants. The preferred would be convertible into Northwest common share-for-share.

77(B). [Proposed by First Boston] Chris-Craft took the depositions of Mr. Laeri on June 10 and Mr. Miller on July 10, 1969. Both men testified concerning the valuation First Boston was to do. Chris-Craft proceeded with its attempt to gain control of Piper, and on July 24 amended its offer to Piper shareholders in competition with the Bangor Punta offer, with knowledge of the date as of which First Boston's valuation would speak.

77(C). [Proposed by First Boston] On July 16, 1969, Messrs. Rochlis and Gordon mailed a letter to all Piper shareholders. The letter stated that Piper had failed to disclose certain matters. Though Messrs. Rochlis and Gordon were aware of the date as of which First Boston's opinion would speak and that Bangor Punta had no intention of guaranteeing the value of the securities, the letter did not mention these matters.

77(D). [Proposed by First Boston] In setting the terms of its July 24 offer, Chris-Craft knew the date as of which First Boston's valuation was to speak, and it set the terms of the July 24 offer after the effective date of the Bangor Punta exchange offer, with knowledge of the precise makeup of the package. At the time the July 24 exchange offer was made, Chris-Craft had available to it market quotations on the Bangor Punta package.

77(E). [Proposed by First Boston] Bangor Punta's final prospectus, which was mailed to Piper shareholders on July 18th, stated the precise terms of the Bangor Punta package, and described the provision of the May 8 agreement. Market quotations on the package were available from the New York Stock Exchange and NASD pink sheets with respect to the common stock and warrant components beginning on July 18, 1969 and with respect to all components beginning on July 23, 1969.

78A. [Proposed by Piper] On May 12 and May 16, 1969, Chris-Craft's Board of Directors adopted resolutions approving Chris-Craft's exchange offer to Piper shareholders. The resolutions further provided:

> "the Chairman of the Board and President of the Corporation be, and he hereby is, authorized to determine at any time hereafter that the Exchange Offer is not advisable and in the best interests of the Corporation and, therefore, not to proceed with the Exchange Offer".

Chris-Craft did not make any public announcement with respect to these actions by its Board of Directors.

New

79. [Proposed by Chris-Craft] On May 14, 1969, a Memorandum of Agreement was entered into, with the knowledge of First Boston, by certain members of the Piper family owning 46,358 shares of Piper stock ("the Bolles Group") and defendants W. T. Piper, Jr., Howard F. Piper and Thomas F. Piper ("the Guarantors") which provided, in part, that subject to certain conditions,

> "Guarantors guarantee to each member of the Bolles Group that upon the sale of any of such securities in the principal market therefor he will receive gross proceeds at least equal to the amount indicated in the opinion of The First Boston Corporation as the fair market value thereof on the exchange date under the Exchange Offer ("Fair Market Value"), provided that such sale takes place prior to April 1 of the year following the year of the exchange date."

The Memorandum of Agreement provided that

> "Before effecting any sale during the period prior to such April 1, the selling member of the Bolles Group will notify the Guarantors of his intention to do so, in a letter offering to sell to the Guarantors or their designees or assigns the securities that are the subject of the proposed sale, at a price equal to the Fair Market Value of such securities . . ."

and further provided that

> "Guarantors shall have the right at any time and from time to time prior to expiration of their guarantee under this paragraph to pur-

> chase from any one or more members of the Bolles Group an aggregate Fair Market Value of Bangor Punta securities equal to the undischarged liability of Guarantors to such member under this paragraph; each such purchase shall consist of the Bangor Punta securities received by said member in respect to one or more shares of Piper Common Stock . . ."

The Memorandum of Agreement also stated that

> "Notwithstanding any other provision of this paragraph, the liability and obligations of Guarantors under this paragraph shall apply as to any member of the Bolles Group only with respect to the sale by him of the total of (a) the first 32-1/2% of the Fair Market Value of the Bangor Punta securities received by him under the Exchange Offer, (b) an additional percentage of such aggregate Fair Market Value equal to any net effective increase after the date hereof in state or federal income taxes applying to the Exchange Offer transaction by such member . . ."

The 32-1/2% figure specified was the effective state and federal income tax rate applicable to the securities involved in the transaction.

80. [Proposed by Chris-Craft] On May 16, 1969, in a post-effective amendment to Chris-Craft's exchange offer, which had become effective on May 15, 1969, Chris-Craft amended its exchange offer for Piper shares by adding $10 in cash per share, making its offer (a) 1 share of Chris-Craft $2.00 convertible preferred stock, (b) warrants to purchase 2 shares of Chris-Craft common stock, and (c) $10 in cash.

80A. [Proposed by Piper] On May 17, 1969, the press reported that Bangor Punta had acquired an additional 100,000 Piper shares from outside the Piper family.

81B. [Proposed by Piper] On May 19, 1969, Chris-Craft sent proxy material to its shareholders in connection with a special meeting of shareholders to vote on the Chris-Craft exchange offer to Piper shareholders called for June 6, 1969. The proxy material urged a vote for approval of the exchange offer and stated at page 3:

> "The proposed acquisition of Piper common stock is the result of your management's analysis of the existing assets, liabilities and operations of Piper, its earnings over a period of years, the investment which Chris-Craft already has in Piper, the market prices of Piper common stock in relation to the market prices of Chris-Craft common stock and the potential of the business of Piper . . . . If the companies are, in fact, combined, the combined business would have greater diversification in products and activities than Chris-Craft now possesses.
>
> "Management reserves the right to delay or decline to proceed with the exchange offer, in its discretion."

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82B. [Proposed by Piper] Chris-Craft's preliminary prospectus filed on February 27, 1969 contained the following statement on page 7:

> "Chris-Craft may, during the pendency of the exchange offer, purchase shares of Piper common stock on national securities exchanges at prices then current thereon or otherwise at negotiated prices."

On April 22, 1969 the SEC submitted a letter of comments on Chris-Craft's registration statement and prospectus. That letter did not make any reference, or state any objection, to this sentence, although it did comment on other provisions appearing on page 7 of Chris-Craft's preliminary prospectus.

82(C). [Proposed by First Boston] Chris-Craft had purchased 9100 shares from the date it announced its exchange offer to April 7th, and at the time the April 7th meeting with the S.E.C. was held, had outstanding orders for further market purchases.

ONLY COPY AVAILABLE

83. [Proposed by Chris-Craft] On May 5, 1969, the SEC published SEC Release 8595 entitled "Notice of Revision of Proposed Rule 10b-13 under the Securities Exchange Act of 1934" which stated, in part:

> ". . .The rule as proposed also applies to exchange offers, i.e., where one company is offering its own securities in exchange for the securities of another issuer. This provision is, in effect, a codification of existing interpretations under Rule 10b-6, which among other things, prohibits a person making a distribution from bidding for or purchasing the security being distributed or any right to acquire that security. These interpretations have pointed out that the security to be acquired in the exchange offer is, in substance, either a right to acquire the security being distributed or is brought within the rule under paragraph (b) thereof; and Rule 10b-6 prohibits the purchase of such security during the distribution except through the exchange offer, unless an exemption is available. . . ."